



**REPORT BY THE QUEEN'S COUNSEL SELECTION PANEL
TO THE LORD CHANCELLOR
ON THE PROCESS FOR THE SELECTION AND APPOINTMENT
OF QUEEN'S COUNSEL 2018**

1. Process and Competency Framework

The current system for the appointment of QCs, developed by the Bar Council and the Law Society with support from the then Department for Constitutional Affairs, was first used for the 2005-6 competition. Following that competition, the process was revised in the light of experience. The revised Process (including the competency framework) was agreed by the professional bodies, and approved by the then Lord Chancellor, in 2006. It has been used ever since, subject only to minor modifications.

2. Selection Panel

There were three changes to the composition of the Selection Panel for the 2018 competition: Monisha Shah joined as a lay member in succession to Quinton Quayle; and Rachel Langdale QC and Penelope Reed QC succeeded Martin Mann QC and Shaun Smith QC as barrister members of the Panel.

The Panel which oversaw the 2018 competition and considered the applications thus comprised:

- Sir Alex Allan (Chair - appointed 2017, appointed lay member 2013)
- Wanda Goldwag (lay member - appointed 2015)
- Tony King (solicitor member - appointed 2014)
- Rachel Langdale QC (barrister member - appointed 2018)
- Edward Nally (solicitor member - appointed 2016)
- Penelope Reed QC (barrister member - appointed 2018)
- Dr Maggie Semple OBE (lay member - appointed 2017)
- Monisha Shah (lay member - appointed 2018)
- Dame Janet Smith (judicial member - appointed 2016)
- Ranjit Sondhi CBE (lay member - appointed 2014)

The Panel has been supported by a Secretariat comprising two full-time and two part-time members of staff, with additional support at particularly busy times.

3. Application and Appointment Fee

The costs of considering applications for appointment as Queen's Counsel are met solely by applicants' fees. The level of the fees is set by the Directors of QC Appointments Ltd, acting on behalf of the Bar Council and the Law Society.

The fees remained unchanged from last year. The application fee was £1,800, and for applicants who are appointed, a further appointment fee of £3,000 will become payable, in addition to the cost of Letters Patent. VAT is payable on the application and appointment fees.

The professional bodies introduced on a pilot basis in 2017 a facility for reduced fees (payable at half the standard amounts) for applicants with low earnings, defined as below £60,000 in fees for those at the self-employed Bar. One applicant in the 2018 competition took advantage of that reduced fee.

4. Receipt of Applications

Applications were invited from 14 February 2018 with a deadline of 5 pm on 28 March 2018.

In all, 240 applications were received, a reduction of 32 on the previous year.

5. Description of Practice and List of Cases

The application form invited applicants to give a summary description of practice, which was an opportunity to give the Panel a direct understanding of the nature of their practice, draw attention to the most important cases, and to explain any problems with naming assessors or other matters.

Applicants were asked for a schematic list of the cases mentioned in their summary description of practice, showing their role in the case and which of their assessors had experience of them in that case. This facilitated the selection of assessors and enabled the Panel to make more effective use of the evidence from assessments.

Applicants were asked to list 12 cases of substance, complexity, or particular difficulty or sensitivity in which they had appeared in the last three years. The guidance made it clear that where there was a good reason, such as a career break, it would be acceptable to list cases from longer ago.

6. Assessors

Applicants were required to provide the names of assessors in three categories: judicial, practitioner, and client. They were asked to provide the names of at least eight (and up to 12) judicial assessors, six practitioner assessors, and at least four (and up to six) client assessors.

In the 2018 competition, 87% of applicants named at least the minimum of eight, six and four assessors sought. A total of 31 applicants named fewer than eight judicial assessors, 12 of whom named six or fewer judicial assessors, compared with 26 applicants naming six or fewer in 2017. In two cases where the application form failed to explain satisfactorily the reasons for a significant shortage of judicial assessors, the Chief Executive wrote to the applicant on behalf of the Selection Panel, seeking a further explanation.

7. Validity of Assessors

Applicants were told that they should not list as an assessor a spouse or partner (or former sexual partner) or the Attorney General or Solicitor General for England and Wales. Applicants were told they should not list a member of the Selection Panel as an assessor, unless there was no alternative assessor who could provide equivalent evidence about the applicant's abilities.

Anybody acting in a judicial capacity is now eligible to provide a judicial assessment. However, the Guidance for Applicants makes clear that the weight the Selection Panel can give to individual judicial assessments is likely to depend in large part on the degree to which the assessor appears to the Panel to be familiar with, and able to assess applicants against, the standards expected of silks in the higher courts of England and Wales.

8. Nominated Assessors

The Process requires the Panel to seek assessments from one assessor in each of the three categories (judicial, practitioner and client) who has been specifically “nominated” by the applicant. Applicants list a first and second nominated assessor in each category in case the first nominated assessor is unable to provide an assessment for any reason. This year, assessments were received from a nominated assessor in each of the judicial, practitioner and client categories in respect of all applicants.

9. Assessor Selection

Apart from the nominated assessors, it is necessary to decide which of the other potential assessors listed by each applicant should be asked to provide an assessment, in order to secure the four judicial, three practitioner and two client assessments the process requires the Selection Panel to seek to obtain on each applicant. The assessor selections were carried out by senior Secretariat staff, overseen by the Chief Executive, on the basis of criteria which had been laid down by the Panel.

In advance of the competition, the Panel decided that ideally no assessor should be asked for more than six assessments. However, there was a small number, mostly of the senior judiciary, who were frequently mentioned as assessors. The overriding consideration was to select assessors who were well placed to provide high quality evidence and who, taken together, could effectively comment across the breadth of the applicant’s practice and on all the competencies. In the event, two assessors were asked for, and provided, seven assessments.

The Panel also agreed that where an assessment provided no usable information, the Secretariat would select an alternative assessor from amongst those listed by the applicant. This led to 36 of the assessments originally provided being discarded in favour of more informative assessments from a different assessor in the same category.

10. Broader Views

The Panel has recognised that assessors may have other colleagues, notably specialist or local judges, who have further direct personal experience of the applicant which could be helpful to the Panel in making a fully informed decision. The Panel has wished to benefit from that broader experience, but has been concerned that any use of such information should be as fully transparent and as evidence-based as the rest of the process. Accordingly, it was made clear that individual assessors were free to consult other colleagues with further direct experience of the applicant, and to report their views as part of the assessment in a separate section on the form.

In the past, assessors have sometimes commented in the course of an assessment on how the judiciary in a particular field collectively ranked the applicant in comparison with other applicants. The Guidance to Assessors was amended in 2016 to make it clear that comparative material of that sort would need to be redacted from assessments before they were passed to Panel members for grading. Assessments are also normally redacted where the assessor refers to previous applications, or where the assessor compares an applicant directly with others.

11. Seeking Assessments

All assessors were asked to provide evidence of each of the competencies where they could, and to score the applicant overall with a single rating. Assessors were not asked to give a rating in relation to individual competencies. It was emphasised that assessors need not comment on those competencies on which they had no evidence to offer.

The Secretariat initially sent 1577 letters seeking a total of 2160 assessments, i.e. around 1.4 assessments per assessor on average, the same as last year. In addition, as a result of assessors failing to respond, declining to provide an assessment, or providing an assessment with no usable information, the Secretariat sent letters seeking in total a further 167 assessments. A total of 2327 assessments were thus requested in this competition.

The Secretariat pursued outstanding assessments from late May 2018 through to early August 2018.

12. Assessments Received

The first completed assessment was received on 10 April 2018, and the overwhelming majority by the third week of June. A total of 89 assessors did not provide assessments sought: 55 assessors said they were unable to provide assessments on at least one applicant; 34 were reported to be unavailable or failed to respond to the request in relation to one or more assessments.

The Secretariat eventually secured nine usable assessments for each applicant, a total of 2160 assessments, which were considered by Panel members.

13. Integrity and Professional Checks

As the Process requires, a full list of applicants was sent to the senior judges, namely the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, and the Senior Presiding Judge. The lists were also sent to senior judges in charge of the Upper Tribunal Chambers. The judges were invited to let the Panel know where they had any reason to believe that an issue concerning integrity as it related to the competency framework was known to them or another judge, in order to enable the Panel to seek comments from that judge. No substantive responses were received.

Lists of barrister and solicitor applicants were sent respectively to the Bar Standards Board (BSB) and Solicitors Regulation Authority (SRA) to ensure that any findings or uncompleted investigations relating to misconduct were identified. Similar checks were made with the Office of Legal Complaints (OLC).

The Character Issues Sub Panel of the Panel, chaired by Wanda Goldwag, considered the information provided by the regulatory bodies, along with information disclosed by applicants in their application forms, in an anonymised form.

In cases where professional checks revealed that an applicant was subject to a disciplinary finding, the Secretariat sought a full explanation from the applicant, except where such an explanation had already been given in the application form.

14. Recusal of Panel Members

Panel members were invited to notify the Secretariat of any applicants whom they could not properly consider by virtue of some personal connection. In addition, as in previous competitions, applicants were provided with an opportunity to name any Panel members by whom they considered it would have been inappropriate for their case to be considered. The approach the Selection Panel take to recusals is set out in Annex D to this report.

Panel members who were recused did not provisionally grade or interview the applicant. Furthermore, Panel members who were recused took no part in discussing that application at moderation meetings.

15. Declarations of Interest

Panel members were also asked to declare any current or recent interest which they had which might be material to the functions of the Panel, or anything else that might be perceived by others as potentially compromising their objectivity in carrying out these functions. The Register of Interests is published on the QCA website.

16. Panel Pair Assignment

The Process provides that for the purpose of provisionally grading and interviewing the applicants, the Panel should divide up into pairs comprising a legally qualified member and a lay member, and this was how all the pairs were constituted for this competition.

17. Benchmarking

Three benchmark cases were considered in detail (each Panel member having independently completed their own score sheet) at a Panel meeting on 12 June 2018 and provisional decisions made as to whether to invite the applicants to interview. This helped to secure consistency of marking standards as between individual Panel members. The three benchmark applications were considered again, with all the other applications, at pre-interview moderation.

18. Information Considered at Grading

Under the provisional grading process, the members of each Panel pair considered, in relation to their cases:

- a summary 'rating sheet'. This contained the names of all assessors from whom an assessment had been received, with the ratings given by the assessor, whether they were nominated, and whether they had been in the same chambers or firm as the applicant. In addition, the rating sheet gave information about the applicant's specialisms and geographical area of practice;
- the self-assessment, summary description of practice and case list from the application form;
- 'additional information' provided by the applicant with their application, except where it was not appropriate to do so, for example where the applicant included in that section material which should have been elsewhere on the form;
- copies of all nine assessments received;
- the extract from the application form describing the applicant's exposure to each assessor.

Panel members had previously been supplied with the applicants' professional addresses to assist recusal decisions, but this information was not included in grading or interview packs. Panel members were not given date of call or admission. Nor were they provided with other information extraneous to the practice and the demonstration of the competencies (such as age, ethnicity, or disability, or whether

the applicant had applied previously), although sometimes this was disclosed in the assessments or self-assessment, or at interview.

Applicants were told that where any concern was expressed by an assessor amounting to an allegation of professional misconduct, the Panel would not take it into account unless, with the consent of the assessor, it had been put to the applicant, who would be given the opportunity to provide the Panel with an explanation. There were no such instances this year.

19. Grading of Applications

After the benchmarking meeting, Panel members began to grade each applicant. One Panel member took the lead in each case - that is, considering the applicant in depth, and preparing the first draft of the grading pair's report to the full Panel – whilst the other considered the case separately, and indicated whether they agreed with the scores and comments provided by the lead member. Any areas of disagreement were then the subject of discussion and in many cases agreement between them. Where a case was not agreed, it was graded P (meaning the pair was not able to make a firm recommendation to the full Panel). Legally qualified and lay Panel members played an equal part in the grading process, and acted equally as lead or support members of the pair.

20. Diversity

The Competency Framework identifies diversity as a separate competency in which excellence is to be demonstrated. The Panel recognises that different applicants have had different experiences in relation to this competency. The wording of the competency includes both awareness and action - being aware is not enough: there must be evidence of support for the principle and practice of diversity through personal action. In the Panel's view, this is potentially achievable by any applicant, whatever the nature of their practice. In considering diversity, the Panel looked for examples from the applicant's practice which were excellent in the light of their circumstances.

The Panel also recognised that it might be difficult to gain sufficient evidence from the assessments in respect of diversity in advance of the interview. Accordingly, the Panel graded applicants "0" (indicating insufficient evidence to reach a decision) for diversity at the grading stage unless there was sufficient evidence to form a provisional conclusion, and a score of "0" at that stage did not exclude an applicant from an interview if an interview was merited on the strength of the other competencies.

The Panel's approach to each of the competencies is set out more fully in a separate note.

21. Rating Scales

Assessors had been invited to rate the applicant's overall demonstration of the competencies as: Excellent, Very Good, Good, Not Satisfactory, or Poor.

For competencies other than integrity, Panel members used the seven point scoring system developed in 2008 (and set out in Annex B) to assess each competency. The scores given in each competency in turn led to an overall conclusion.

As before, in considering Competency B (Written and oral advocacy), the Panel looked separately at the written (B1) and oral (B2) aspects of advocacy in deciding their view of the competency overall. However, the overall score was not reached through aggregating or averaging the B1 and B2 scores, but reflected the Panel members' judgement in relation to the relative significance of written and oral advocacy in the applicant's practice.

The Integrity competency was regarded as met to the necessary standard provided that there was no credible negative evidence. The Panel noted Integrity as satisfied, not satisfied, or unclear; but did not give it a numerical score.

The Panel is looking for the demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity. In the grading of applicants and at moderation, the Panel noted substance as demonstrated, not demonstrated, or unclear; but did not score it as if it were a competency. The view of the substance of cases might, however, impact on the strength of the evidence available from that case

22. Sufficient Evidence to Make a Decision

As part of the consideration of applications, the Panel had regard to whether the evidence (at this stage from the self-assessment, summary description of practice and the assessments) was adequate to make a decision on whether the applicant merited an interview, and how far any deficiencies in evidence could be made up at interview. In past years there has sometimes been a very small number of cases where there was insufficient evidence for the Panel to form a conclusion as to the demonstration of the competencies, and the application thus had to be treated as unsuccessful at this point. However, that did not apply to any applicants this year.

23. Pre-interview Moderation and Filter

The reports prepared on each applicant by the grading pair were all considered by the full Panel at the pre-interview moderation meeting. It was thus for the full Panel, not for the grading pairs, to decide whether or not individual applicants were interviewed.

The Panel's approach is essentially that applicants should be interviewed unless it appears, having considered the assessments from the assessors together with the applicant's own self-assessment, that they have no reasonable prospects of success. The Panel considers that it is possible for applicants' scores to improve in each of the competencies at interview. Accordingly, applicants are invited to interview unless their score for one or more competencies at pre-interview moderation is at least two below the minimum level required to be recommended for appointment.

This year, 173 applicants were invited to interview, and 67 were not. That means that 28% of applicants of applicants were filtered out at this stage, compared with 31% in 2017, 25% in 2016, and 28% in 2015.

The Panel's decisions about whether or not applicants should be interviewed were notified to applicants on 5 September.

24. Applicant Interview – Scheduling

Applicants were asked on 1 May 2018 to give an indication of their expected availability throughout the interview period. Following pre-interview moderation, the Secretariat prepared an interview schedule aiming as far as possible to meet the applicant's own wishes as to availability and location, subject to recusal and other similar issues.

25. Applicant Interview – Preparation

In the course of pre-interview moderation, the Panel identified any areas of particular focus for the interviews of each applicant, in addition to those areas identified by the graders. The Panel also agreed a framework of specimen questions, which interview pairs were invited to draw on, subject to any directions which the Panel had given at pre-interview moderation, or to any other matters appearing to the interview pairs to be appropriate for each individual applicant.

26. Applicant Interview - Form and Content

The purpose of the interview was to provide further evidence as to the competencies, especially in respect of those competencies where adequate evidence was lacking or unclear. The interview could explore circumstances which cast light on the level at which the competencies were demonstrated by the applicant, and allowed any criticisms of the applicant to be tested.

The interviewers probed for examples of excellence and sought to resolve any questions on the competencies. Questioning could be directed to any or all of the competencies, although the extent to which any one competency was the subject of questioning varied according to the issues arising in respect of each applicant. The evidence from interview was used to augment the information in the assessments and the applicant's own self-assessment. While it might confirm or require an adjustment to the marking previously given on a competency, the interview was not in itself determinative. However, where applicants came across poorly at interview, the interview pair (and in due course the Panel) re-examined the assessments and the self-assessment particularly carefully.

The Secretariat wrote in advance to all applicants to be interviewed with information about the nature and format of the interview.

27. Applicant Interviews

Applicant interviews were carried out between 20 September and 11 October 2018. Interviews were held in London and Manchester.

Each interview pair normally conducted four interviews each day (although the need to reschedule some interviews because of the illness of applicants meant that on three occasions a Panel pair conducted five interviews in a day.) This provided adequate time for the interview pairs to discuss each applicant and to dictate the interview record before the next interview. It also meant that, although the aim was for each interview to last 35-40 minutes, it was possible to take longer when necessary, especially with borderline applicants. Given the importance of the decision whether or not to recommend an applicant for appointment, and the importance of the interview in adding to the information available to the Panel, the Panel considers the change from the previous practice of each pair conducting five interviews a day to have been well worthwhile.

Each interview pair comprised one legally qualified and one lay Panel member. Applicants were informed who were to be their interview pair on arrival at the interview venue. A brief biography of each of the interview pair was provided in the interview waiting room. Those biographies were also available on the QCA website.

The Panel sought to enable a third (non-grading) Panel member to be one of the two interviewers, to secure wider involvement of Panel members in the detailed consideration of each case; that was achieved in all but 12 cases.

After the interview, the interviewing pairs revisited each of the competency scores taking account both of the provisional grading and the new evidence at interview. To assist the Panel in developing the effectiveness of the interviews, and with advance notification to the applicant concerned, the Chief Executive sat in on four interviews to observe the proceedings and to provide feedback to the Chair of the Panel on Panel members' conduct of the interview. He played no part in the interview itself, nor in the discussion between the Panel pair after the interview.

28. Final Moderation

Moderation by the full Panel took place over three days, on 22, 23 and 24 October 2018. The purpose of moderation was to ensure that a consistent standard had been applied to all applicants and in particular to afford the full Panel the opportunity to resolve those cases which presented particular difficulties. This ensured that full Panel agreement was secured to the list of names to be recommended to the Lord Chancellor.

For each applicant, the Panel had before it the up-to-date rating sheet and score sheet (which included evidence from assessors), previous moderation records, and the interview record with the interviewing pair's conclusions. Full sets of the assessments and material from the application form were also available where required. The Panel had no information about the personal characteristics of the applicant, or whether they had applied before, except as was apparent at interview or from the assessments or other documentation. This year, so far as practical, the Panel considered applicants from the same specialism one after the other, so as to facilitate the taking of a consistent approach to all applicants from a particular specialism.

The Panel reviewed all those interviewed on a case by case basis, considering the evidence available as to the demonstration of the competencies in an open and at times vigorous discussion. In this way, the conclusions on the extent to which each applicant demonstrated the competencies and the outcome of their application were settled.

At the conclusion of the moderation, the Panel was informed of the effect of their decisions in the light of factors in the monitoring data or in relation to applicants' practices.

A commentary by the Panel on its recommendations this year is attached at Annex C.

29. Issues of Character

The Panel considers issues of character on an anonymised basis at pre-interview moderation. This timing enables any questions about a serious character issue to be put to the applicant at interview if appropriate, although to date that facility has not been used.

Based on the information supplied by the applicants and by the professional bodies in response to the request made on behalf of the Panel, the Character Issues Sub Panel considered all the issues in an anonymised form and reported to the full Panel at pre-interview moderation. This enabled the Panel to take a view of the seriousness of any character issue. There was one applicant this year in respect of whom there were serious character issues which would have made it inappropriate to recommend appointment, regardless of the degree to which the applicant satisfied the competencies. As it happened, the applicant would not have been invited to interview anyway, as a result of the Panel's consideration of the degree to which they satisfied the competencies.

30. Recommendations

The Panel has made 108 recommendations for appointment (45% of all applicants and 62% of applicants who were interviewed). The Panel's recommendations about the 173 applicants interviewed and the names of the 67 filtered out before interview are set out in an accompanying document.

31. Repeat Applicants

Although an applicant may have applied longer ago, the Secretariat looks back only over the previous three competitions in identifying 'repeat applicants' for statistical and monitoring purposes. In 2018, 87 applicants (36%) had applied in at least one of the three previous competitions.

The Secretariat set out to ensure that, where possible, each applicant was not graded and/or interviewed by the same pair as in either of the previous two years, but should have at least one fresh Panel member at each stage, and ideally two Panel members who were fresh to the applicant for any interview. This was achieved in every case.

Of the repeat applicants, 22 were not invited to interview, although 11 of these had been interviewed in at least one of the previous three years. The number not interviewed represented 25% of all repeat applicants, compared to 29% of first time applicants not invited to interview. In all, 37 (43%) repeat applicants were recommended for appointment compared to 71 (46%) of new applicants.

32. Feedback and Notification

To enable the Process to be of assistance to unsuccessful applicants, and to assist further professional development, individual written feedback is provided to all unsuccessful applicants.

Feedback was sent to the applicants who were not invited to interview on 2 October 2018. The text of the feedback was prepared by the Chief Executive, drawing on the grading report prepared by the Panel pair and the Panel's pre-interview moderation. The drafts were amended if necessary, and approved, by the lead grader and by the Chair of the Selection Panel.

The Panel will in due course provide written feedback to the remaining unsuccessful applicants. This feedback will be included with the letter notifying the unsuccessful interviewed applicants of the outcome of their application, and will be sent at the same time as the notifications to those applicants who have been successful.

A note outlining the way in which the Panel approaches the provision of feedback to applicants not invited to interview was published on the QCA website. It is intended to publish a similar note about the feedback to those not recommended after interview.

33. Complaints: 2018 Competition

Any applicant who wishes to make a complaint about the 2018 competition has (under the agreed Process) 60 calendar days after the announcement of the appointments to make the complaint.

34. Complaints: 2017 Competition

There were no complaints to the Complaints Committee from applicants in the 2017 competition.

Sir Alex Allan Chair, Queen's Counsel Selection Panel
October 2018

Annex A - The Competency Framework 2018

Annex B - Rating scales 2018

Annex C - Commentary by Queen's Counsel Selection Panel on its recommendations 2018

Annex D – Selection Panel: Approach to Recusals

THE COMPETENCY FRAMEWORK 2018

The Panel will judge how far an applicant meets the competencies as described by the passage in italics. The examples provided are intended to assist applicants, assessors and others. Consideration of the demonstration of the competency is not limited to the examples quoted.

To merit recommendation for appointment all competencies must be demonstrated to a standard of excellence in the applicant's professional life. In general the Selection Panel will be looking for the demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity. Competency B (Written and oral advocacy) *must* be demonstrated in such cases.

A. Understanding and using the law

Has expert, up-to-date legal knowledge and uses it accurately and relevantly, and becomes familiar with new areas of law quickly and reliably.

Examples:

- ✓ Is up to date with law and precedent relevant to each case dealt with, or will quickly and reliably make self familiar with new areas of law.
- ✓ Draws on law accurately for case points and applies relevant legal principles to particular facts of case.

B. Written and oral advocacy

Develops and advances client's case to secure the best outcome for the client by gaining a rapid, incisive overview of complex material, identifying the best course of action, communicating the case persuasively, and rapidly assimilating the implications of new evidence and argument and responding appropriately.

The Panel will be looking both at the written and oral aspects of advocacy. Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or negotiation.

Examples (Written advocacy):

- ✓ Writes arguments accurately, coherently and simply, and in an accessible style.
- ✓ Presents facts and structures arguments in a coherent, balanced and focused manner.
- ✓ Deals effectively with necessary preliminary stages of legal disputes.
- ✓ Gains and gives an accurate understanding of complex and voluminous case material.
- ✓ Appreciates aspects of the case that are particularly important, sensitive or difficult and appreciates the relative importance of each item of evidence.
- ✓ Prepares thoroughly for the case by identifying the best arguments to pursue and preparing alternative strategies.
- ✓ Anticipates points that will challenge an argument

Examples (Oral advocacy)

- ✓ Deals responsibly with difficult points of case management and disclosure.
- ✓ Presents facts and structures arguments in a coherent, balanced and focused manner.
- ✓ Assimilates new information and arguments rapidly and accurately.
- ✓ Immediately sees implications of answers by witness and responds appropriately.
- ✓ Listens attentively to what is said paying keen attention to others' understanding and reactions.
- ✓ Accurately sees the point of questions from the tribunal and answers effectively.
- ✓ Gives priority to non-court resolution throughout the case where appropriate, identifies possible bases for settlement and takes effective action.
- ✓ Prepared and able to change tack or to persist, as appropriate.
- ✓ Deals effectively with points which challenge an argument.

C. Working with others

Establishes productive working relationships with all, including professional and lay clients, the judge and other parties' representatives and members of own team; is involved in the preparation of the case and leads the team before the court or other tribunal

Examples:

- ✓ Behaves in a consistent and open way in all professional dealings.
- ✓ Establishes an appropriate rapport with all others in court and in conference.
- ✓ Advances arguments in way that reflects appropriate consideration of perspective of everyone involved in the case.

- ✓ Helps the client focus on relevant points and is candid with the client.
- ✓ Explains law and court procedure to client and ensures the client understands and can decide the best action.
- ✓ Keeps lay and professional clients informed of progress.
- ✓ Is prepared to advance an argument that might not be popular and to stand up to the judge.
- ✓ Responds to the needs and circumstances of client (including client's means and importance of case to client and bearing in mind duty to legal aid fund) and advises client accordingly.
- ✓ Meets commitments and appointments.
- ✓ Accepts ultimate responsibility for case when leading the team.
- ✓ Motivates, listens to and works with other members of own team.
- ✓ Aware of own limitations and seeks to ensure that they are compensated for by others in team.
- ✓ Able to take key decisions with authority and after listening to views.
- ✓ Identifies priorities and allocates tasks and roles when leading the team.

D. Diversity

Demonstrates an understanding of diversity and cultural issues, and is proactive in addressing the needs of people from all backgrounds and promoting diversity and equality of opportunity

Examples:

- ✓ Is aware of the diverse needs of individuals resulting from differences in gender, sexual orientation, ethnic origin, age and educational attainment and physical or mental disability or other reason, and responds appropriately and sensitively.
- ✓ Is aware of the impact of diversity and cultural issues on witnesses, parties to proceedings and others as well as on own client, and adjusts own behaviour accordingly.
- ✓ Takes positive action to promote diversity and equality of opportunity.
- ✓ Understands needs and circumstances of others and acts accordingly.
- ✓ Confronts discrimination and prejudice when observed in others; does not let it pass unchecked.
- ✓ Acts as a role model for others in handling diversity and cultural issues.

E. Integrity

Is honest and straightforward in professional dealings, including with the court and all parties

Examples:

- ✓ Does not mislead, conceal or create a false impression.
- ✓ Honours professional codes of conduct.
- ✓ Where appropriate refers to authorities adverse to the client's case.
- ✓ Always behaves so as to command the confidence of the tribunal and others involved in the case, as well as client.
- ✓ Acts in professional life in such a way as to maintain the high reputation of advocates and Queen's Counsel.

QC Secretariat

Rating scales 2018

(as agreed at the Panel meeting on 12 June 2018)

Overall grading	Criteria	Definition
A	<p>A consistently outstanding performer or an excellent performer. Called to interview.</p> <ul style="list-style-type: none"> ▪ Marked 7 for any three competencies, including Competencies A and B. ▪ Marked 6 in the remaining competency 	STRONG/GOOD EVIDENCE OF EXCELLENCE
B	<p>Generally a good and sometimes excellent performer. Called to interview.</p> <ul style="list-style-type: none"> ▪ A minimum of 6 in Competencies A and B. ○ No competency below 5 (ie never less than competent in any competency). A 0 in diversity is treated as a 5 at this stage. 	SOME EVIDENCE OF EXCELLENCE
C	<p>At best a satisfactory performer who may have excellence in some competencies, but may show weaknesses in one or more competencies. Not called to interview</p> <ul style="list-style-type: none"> ▪ Competency A and/or B marked 5 at best; OR ▪ One or more competencies marked 4 or below. 	INSUFFICIENT EVIDENCE OF EXCELLENCE
0	<p>One or more of competencies A-C marked as 0, and unlikely to be made up at interview</p>	INSUFFICIENT EVIDENCE
P	<p>At Provisional Grading or at interview if a Panel Pair is unable to reach a conclusion they may mark an applicant P, requiring decision by full Panel.</p> <p><i>Ideally, even if Panel discussion is required, some indication of possible grading outcome is helpful</i></p>	Panel Consideration

Ratings for competencies

Competencies as an advocate		Grouping
Insufficient evidence to form any view of the competency.	0	
Generally poor performance in this competency.	1	Poor
Significant weakness evident in this competency.	2	Not satisfactory
Some weakness evident in this competency.	3	
Generally satisfactory performance in this competency, but limited, if any, evidence of excellence.	4	Competent
Some evidence of excellence in this competency, but not enough or consistent enough.	5	
Evidence of excellence in this competency.	6	Excellent
Strong evidence of excellence in this competency.	7	

Ratings for Competency E Integrity

Evidence of lack of Integrity	N
Uncertainties over Integrity	??
Positive evidence of Integrity or absence of negative evidence	Y

All applicants not receiving Y as to Competency E Integrity should be referred to Full Panel for consideration.

Ratings for substance, complexity, or particular difficulty or sensitivity

Cases not generally of substance, complexity, or particular difficulty or sensitivity, which calls into question the applicant's ability to demonstrate Competencies to the necessary standard	N
Uncertainty over substance, complexity, or difficulty or sensitivity of cases and therefore applicant's demonstration of the competencies	??
Cases all or generally of substance, complexity, or particular difficulty or sensitivity	Y

Comment should be made on the score sheet in respect on any applicant not securing Y for substance.

**COMMENTARY BY QUEEN'S COUNSEL SELECTION PANEL
ON ITS RECOMMENDATIONS 2018**

1. This annex is intended to provide the Lord Chancellor with the Selection Panel's comments on our recommendations this year and on matters which have emerged from consideration of the applications.

Decision making

2. We have applied a common standard to all applications. Our arrangements have enabled Panel members to work in pairs with a number of different colleagues. We have sought to reinforce consistency in marking by benchmarking; by grading in a number of differently composed pairs (rather than dividing the Panel into five fixed pairs); by seeking to involve a further Panel member in any interview; by ensuring that all cases are moderated by the full Panel, both at the pre-interview stage and in deciding the final recommendation; and by grouping applications at the final moderation meeting so that all applicants for each of the main specialisms were considered consecutively.
3. We believe that the procedures we have adopted have provided a fair and even-handed consideration of all applicants and that Panel members share a common view of the standard applicants must attain. Inevitably, at the margins there are some fine distinctions to be made. In many applications the interview was particularly helpful, especially in providing evidence in relation to diversity.
4. At our final moderation, we re-examined as a full Panel the conclusions of the interviewing pairs on each interviewed applicant, where necessary revisiting the views of the grading pair or of the Panel itself at pre-interview moderation. We collectively settled, confirmed or modified the scores received by the applicant, consulting the interview record, assessments and other documentation as appropriate.

The Standard of Excellence

5. As a Panel we keep the standard of excellence under review, considering each year how far the standard requires any refinement, in particular in relation to making clear the distinction between excellent advocates who merit silk, and those who are competent or even very good, but who do not in our judgement reach the required standard. We have sought to apply the same standard as in the previous years. That standard has (we believe) been well received by successive Lord Chancellors, by the judiciary, and by the legal profession. We were reassured on this by our contact with the professional bodies and through the regular surveys of assessors which we now conduct.
6. The standard to be applied is *excellence*. We have applied a common standard to all applications. To be recommended for appointment, applicants needed to demonstrate **strong** evidence of excellence in both Competency A (Understanding and using the law) and Competency B (Written and oral advocacy) and in either Competency C (Working with others) or Competency D (Diversity), with **good** evidence of excellence in the remaining competency.
7. The Process requires that advocacy (written or oral) should be in relation to disputes actually or potentially before courts and tribunals (including arbitration tribunals). We have taken the view

that to be recommended, applicants need to demonstrate evidence of excellence in both written and oral advocacy. Written advocacy is considered alongside oral advocacy. We recognise the importance in advocacy of seeking to reach agreement without the need for a dispute to come to court, and that different fields of practice will provide applicants with differing opportunities for appearing in court. We invited applicants to comment on both aspects in their self-assessment, and invited assessors to comment on both aspects in their assessments. At grading, interview and moderation we considered the two aspects separately and then together, in order to form an overall view of the applicant's demonstration of this competency.

8. Our approach to diversity is described at Section 20 of the report. The agreed Process and Competency Framework identifies diversity as a separate competency in which excellence is to be demonstrated. We recognise the importance attached to diversity by successive Lord Chancellors and Lord Chief Justices, and by the leaders of the profession. Applicants who fall short of excellence in relation to diversity are not recommended for appointment. This year, there were no cases in which failure to demonstrate evidence of excellence in diversity was the sole reason for our decision not to recommend appointment, but it was a material factor in five cases of applicants who reached the necessary standard both on "understanding and use of the law", and on "written and oral advocacy", but did not demonstrate **strong** evidence of excellence either in "working with others" or in "diversity".

Range and Quality of assessments

9. We are again very grateful to all the judicial, practitioner and client assessors who have made an indispensable contribution to the appointment process by providing assessments. The success of this appointments scheme depends heavily on the support and commitment of the judiciary and the legal profession in providing high quality assessments. We would not be able to do our job without the readiness of assessors to let us have their views about the extent to which applicants demonstrate the competencies.
10. The quality of assessments has been maintained this year. However, once again the overwhelming majority of assessments, particularly from clients, were supportive of the applicant, with many assessors apparently reluctant to make clear where an applicant, although an entirely competent and satisfactory advocate, does not meet the very high standards required for silk. We ask assessors to reserve ratings of excellent or very good for applicants whom they consider suitable for appointment. However, around 91% of assessments graded the applicant as very good or excellent (compared with 89% last year) -this was the case for 86% of judicial assessments, 93% of practitioner assessments, and for 98% of client assessments. Some assessors seemed disinclined to be critical even where they do not give praise. Of judicial assessments, 47% graded the applicant as excellent (and a further 2% graded the applicant as very good/excellent.)

Interview

11. We see the interview as giving the applicants 'a fresh opportunity to shine' and to provide further evidence to inform our final decision. Some applicants do indeed shine, but others very evidently do not. The interview is not determinative, but where an applicant has come across poorly, we re-examine all the evidence carefully. In some cases we have concluded that a poor performance at interview has not been such as to outweigh the evidence provided by the assessors. In a small number of other cases, however, especially where a weakness identified at interview was reflected in evidence provided by an assessor, the interview has served to confirm the assessor's doubt and we have accordingly given that much greater weight. In other

words, a poor interview is not necessarily fatal to an application, but it will trigger serious reconsideration.

12. While we recognise that the skills demonstrated at interview are not necessarily the same as the skills required in advocacy, the Panel's view is that the evidence gathered from interview is of considerable importance in contributing to the overall picture of the applicant and thus in informing the decision whether or not to recommend for appointment. This year (as last) it was striking that a number of apparently borderline applicants acquitted themselves particularly well at interview and were able to dispel reservations arising from the Panel's interpretation of their assessments.

Numbers of recommendations

13. We recommend the appointment this year of 108 applicants (45% of applicants). We have reached our recommendations by considering each application in accordance with the agreed process. The agreed process makes no provision for a quota, either on numbers overall, in relation to geography, or in specific fields. We are confident that all our recommendations are well-founded on the evidence we have had, which has been fully tested by the whole Panel during pre-interview and final moderation.

Specialist practices

14. The nature of some kinds of practice means that an applicant might seldom come to court. Where it appears that an applicant is highly successful at settling cases, we have accepted that only rarely will he or she appear before a court in cases of substance, complexity, or particular difficulty or sensitivity; and we have been ready to accommodate that. We have, for example, recommended for appointment practitioners in the fields of personal injury and clinical negligence. Where appropriate, we have taken account of evidence relating to settlement discussions.

Other Jurisdictions

15. Although all applicants must hold rights of audience in the higher courts in England and Wales, we have, as in previous competitions, also considered some applicants who have appeared primarily before various international courts or tribunals, or in other jurisdictions. Although we have dispensed with the previous somewhat complex rules concerning eligibility to provide judicial assessments, it remains the case that evidence is of most value if it 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. We have recommended a very small number of applicants who have little or no current practice in England and Wales, but have nevertheless demonstrated excellence in all the competencies.
15. We are conscious that the award of QC is intended to denote excellence in advocacy in the higher courts of England and Wales. Accordingly, where applicants' practice is primarily elsewhere, whether in Europe, in a different jurisdiction or in arbitration work, the Panel has to give particular attention to the question of whether it is satisfied that 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 practises, the more difficult that is likely to be.

Other Judicial Assessors

18. Assessments have been received in relation not only to cases before the senior courts of England and Wales, and European or international courts, but also in relation to arbitrations, public and planning inquiries, professional disciplinary bodies and specialist tribunals. Many recommended applicants received assessments from judicial assessors who were not judges as commonly understood, such as planning inspectors, arbitrators or others.
19. Whilst we consider that assessments from senior judges (i.e. High Court judges or more senior judges) are particularly valuable, they are not essential. We also value the perspectives of other judicial assessors, such as planning inspectors, tribunal judges, Masters and District Judges, who are able to bring their own specialist expertise or local knowledge to inform our view of the applicant. Where possible, we sought assessments which relate to advocacy in more than a single forum, and in appropriate cases included assessments in relation to an appellate tribunal. This year we have recommended 25 applicants (23% of our recommendations) who have no assessments from current or former High Court or more senior judges in England and Wales. This compares with 18% in both of the last two years.

Evidence from Assessments

20. We are aware of concerns in the past that, as a result of more limited exposure, certain groups of applicants may find it difficult to name sufficient assessors, and that those assessors they could name had insufficient exposure to the applicant's work to be able to provide a good quality assessment. This tends to arise primarily in respect of judicial assessors. Furthermore, some applicants have been involved in a single large case or major public inquiry which could potentially impact on their exposure to a wide range of assessors.
21. Although the Selection Panel asks applicants to list a minimum of eight judicial assessors, the Panel recognises that this is not always possible. If an applicant has had a significant career break, or practises in an area of law where contested trials are comparatively unusual (or both), they may not be able to list eight judicial assessors. The Panel's concern is to ensure that it can get sufficient evidence from judicial assessors to make a well-informed decision about the applicant, and to satisfy itself that the applicant has a good reason for listing fewer than the requested number of assessors, rather than deliberately restricting the Panel's choice of assessors. This year there were 12 applicants who provided fewer than seven judicial assessors, all but two of whom provided a satisfactory explanation for that on their application form.
22. Where there was a shortage of evidence from judicial assessors, particularly in respect of written and oral advocacy, the Panel considered whether the evidence from other assessors, particularly practitioner assessors, was sufficiently strong to compensate for the shortage.

Impact of a Single Critical Assessor

23. The Selection Panel has always emphasised that the views of a single assessor, whether favourable or critical, are never determinative, however eminent the assessor. However, an assessment which is out of line with the other assessments received on an applicant is not necessarily wholly disregarded. At pre-interview moderation such an assessment will generally be treated broadly as if it were as equivalent to the next weakest assessment except in the very rare circumstances where there is a suspicion of personal animus or other improper motive leading an assessor to damn the applicant – in that case the assessment will be wholly disregarded except to the extent that it is corroborated.

24. Although a single adverse assessment will not deprive an applicant of interview if there is otherwise sufficient evidence of excellence, a single adverse assessment may be a key factor in a decision not to recommend appointment. The Selection Panel will generally ask for criticisms made in such an assessment to be explored at interview, to the extent that that can be done without jeopardising the confidentiality of assessments. If the Panel concludes after interview that the criticisms (even from a single assessor) were well-founded; were serious; did not amount to a one-off failure; and cannot be regarded as historical, the criticisms concerned may well lead to a decision not to recommend appointment even if no other assessor has raised similar points. So in that way, the view of a single assessor could be decisive (in that but for that assessor the issues of concern might never have come to light), even though it is not on its own conclusive.

Being Led by a QC

25. Many good quality juniors will be led by a QC in their most significant cases. Nevertheless, many criminal law applicants, in particular, may be expected to give examples of cases where they have themselves acted as a leader. Increasingly, the Panel has looked for such experience to test an applicant's readiness for silk, although we recognise that this is not always possible. Being led can reduce the evidence on which a judicial assessor can comment, especially if the entire oral advocacy is undertaken by the leader. However, the leader can be cited as a practitioner assessor and indeed professional clients may also be well aware of the role played by the applicant in preparing the case and securing an outcome.

Older Cases

26. We have sought to assess each applicant's *current* demonstration of the competencies and his or her suitability to take silk this year. The agreed Process envisages assessments in relation to cases of substance, complexity, or particular difficulty or sensitivity in the last three years.
27. On some applications, a number of the assessors named came from cases which were longer ago. Evidence from such cases may well be less reliable because assessors may have more difficulty recalling the detail for an assessment. It may also be the case that performance many years ago does not directly address the level at which the competencies are currently demonstrated. Nevertheless, we will where appropriate have regard to cases older than the usual three year period. We could readily take account of some older cases where there was also some relatively recent evidence, and all the evidence presented a consistent picture. We also took account of an applicant's practice and personal circumstances, such as absence from practice for health, family or other reasons.

Diversity Monitoring

28. As before, applicants were invited but not required to complete a form for diversity monitoring purposes. This sought information about age, gender, ethnic origin, sexual orientation, and whether the applicant had a disability. All applicants completed the form in part, although 10 did not give their ethnic origin; and 43 did not state their sexuality. In comparison, last year eight applicants withheld information about their ethnic origin and 36 about their sexuality. The forms were detached from the application form and were not made available either to the Selection Panel or to assessors. The Selection Panel was informed of the outcome of their decisions in terms of diversity only after the relevant decisions had been made.

Gender

29. There were 55 women applicants this year (around 23% of all applicants). Of those, 38 (69%) were interviewed (slightly less than the proportion of men interviewed) and we recommend 30 for appointment. That means we recommend 55% of women applicants, compared with 42% of men. Last year we recommended 32 women for appointment, 64% of women applicants, compared with 39% of men.

Sexual orientation

30. Of the 197 applicants who answered the question, six identified as gay men and one as a gay woman. Of those seven gay applicants, six were interviewed, and three have been recommended for appointment. There were two bisexual applicants who were interviewed, and one was recommended for appointment.

Ethnicity

31. In all, this year 30 applicants declared an ethnic origin other than white. This was around 13% of all applicants, the same as the latest available figures for the percentage of BAME practitioners at the Bar.
32. We interviewed 18 (60%) of those applicants (a lower proportion than of white applicants) and have recommended 13 BAME applicants for appointment. That means we have recommended 43% of BAME applicants compared with 45% of applicants whose declared ethnic origin is white.

Disability

33. This year six applicants declared a disability on the application form. Three of these were interviewed and all three were recommended for appointment.

Age

34. There were 20 applicants aged 40 and younger on the date applications closed. Of those, 17 (85%) were interviewed, and 10 (50%) have been recommended for appointment.
35. There were 65 applicants aged 51 and over. Of those, 38 (58%) were interviewed, and 19 (29%) have been recommended for appointment.

Employed advocates

36. There were three employed advocates amongst the applicants and two were interviewed. One has been recommended for appointment. Last year, all of the three employed applicants were recommended for appointment.

Solicitors

37. This year there were five applications from solicitor advocates, compared with 10 last year. All five were interviewed and four have been recommended for appointment.
38. The agreed process was designed to enable solicitor advocates to seek appointment with the assurance that they would be assessed fairly alongside barrister applicants. The number of applications (and of recommendation for appointment) is lower than in previous years, and we

remain concerned that the level of applications from solicitor advocates remains very low. For whatever reason, there appears to be some hesitancy on the part of solicitor advocates to apply for silk, even where they may be well qualified to do so. We will continue to liaise with the Solicitors Association of Higher Courts Advocates and with the Law Society to explore what can be done to overcome this problem.

***Queen's Counsel Selection Panel
October 2018***