



QCA response to the report of the QCCC 2019-20

Introduction

1. QCA is grateful to the Queen's Counsel Complaints Committee for the care it has taken to deal with the complaint it received from an applicant in the 2019 QC competition, and with ancillary matters arising from that. There are, however, some matters in the Queen's Counsel Complaints Committee's report for 2019-2020 to which QCA needs to respond. We follow the headings of the QCCC's annual report in doing so.

The 2019 Complaint

Appearance of bias

2. The QCCC appears to be saying that because the Chair of the Selection Panel and the Chief Executive of QCA had been involved in dealing with a previous complaint from the applicant concerned, there was an appearance of bias arising from:
 - a) The Chair's electronic signature being appended to the feedback letter for the applicant concerned and;
 - b) the Chief Executive's role in finalising the selection of assessors to be approached in respect of the application.
3. QCA does not accept that in either case an appearance of bias arises. The test for apparent bias is "whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased." That does not apply in either instance. In the case of the Chair, the mere appending of an electronic signature to a letter could not possibly give rise to an appearance of bias, when it is documented that the Chair played no part in the decision conveyed in the letter. In the case of the Chief Executive, substituting one assessor listed by the applicant for another, in order better to reflect the Selection Panel's guidance on the selection of assessors, similarly could not cause a fair-minded observer to conclude that there was a possibility of bias.
4. Furthermore, it would be a perverse outcome if a dissatisfied applicant could, simply by raising an unjustified complaint about particular individuals, thereby debar them from participating in any future applications the applicant might make. Such an approach would also have significant practical consequences for an organisation of the size of QCA – which has only two full-time and two part-time members of staff.

Dealing with disability

5. The QCCC report says that QCA gave "the Panel" (presumably a reference to the QCCC) the impression that QCA understood the law as simply requiring that adjustments be made to interview arrangements. QCA has never taken that view. QCA's letter to the Complaints Committee specifically noted that the Selection Panel would take into account the impact of a disability on an applicant's working life, for example, if a disability caused an applicant to have fewer cases of substance than would normally be expected. And we stand ready to make the application form available in other formats to assist the partially sighted.



6. QCA does not, however, consider it appropriate to make allowance for the impact of any disability on the quality of an applicant's performance as advocate. It would be of little consolation to a future client if an advocate appointed as QC would have been excellent but for a particular disability, but is not in fact excellent. QCA is satisfied, having taken external advice on the matter, that it is not necessary or appropriate for the Selection Panel to make allowance for the impact of a disability on the quality of an applicant's performance. We attach a copy of the consultant's report for the information of the Complaints Committee.
7. As applicants are invited to explain about the impact of their disability on the application form – and as the Selection Panel does not in any event make adjustment for the impact on the quality of an applicant's performance as an advocate - QCA does not accept that it is normally necessary or appropriate to write separately to all applicants who disclose a disability to seek their view on what adjustments might be appropriate. It is already the case that where applicants with a disability are invited to interview, QCA specifically writes to them to ask what if any adjustments to the normal arrangements are needed.
8. Accordingly, QCA does not propose to change its current approach to these matters. QCA will, however, expand the Guidance to Applicants to ensure that applicants are fully aware of the approach QCA takes.

The 60-day time limit

9. We agree that the 60-day time limit for making complaints should be incorporated within the procedural rules under which the Complaints Committee operates. That change has now been made.

QCA website

10. We agree that the QCA website did not in 2020 contain information about the complaints process in a sufficiently prominent form. We have now improved the visibility of that section.

Queens Counsel Appointments February 2021