



GUIDANCE FOR OVERSEAS JUDICIAL ASSESSORS 2021

Guidance on assessments on applicants for appointment as Queen's Counsel

Introduction

This document aims to assist judges and arbitrators who are based outside England and Wales and who have been asked to provide an assessment in the 2021 QC competition.

The Selection Panel is keen to receive an assessment drawing on your experience of the applicant, even if you cannot be supportive of the applicant.

Background

1. The award of Queen's Counsel is intended to recognise excellence in advocacy in cases of substance dealt with in the higher courts of England and Wales; in arbitrations conducted under the law of England and Wales; or in tribunals, inquiries or equivalent forums.
2. Although applicants whose practice is primarily outside England and Wales are eligible to apply, provided they hold rights of audience in the higher courts of England and Wales, no applicant can be recommended for appointment unless the Selection Panel is satisfied they are or would be excellent in relation to advocacy in cases of substance dealt with under the law of England and Wales.
3. The Panel welcomes assessments from judicial assessors (including arbitrators) outside England and Wales, and is grateful to those assessors for their help with the process. However, as stated above the scheme is designed primarily to identify advocates who are excellent in relation to cases of substance before the higher courts of England and Wales. Accordingly, it would be particularly helpful if assessors from outside England and Wales could include in their assessment a sentence on the assessor's own familiarity with the levels of skill and expertise, and the standards, expected of QCs in England and Wales. Information on the extent to which the requirements of oral and written advocacy in the forum from which the assessment arises are comparable with the requirements in the higher courts of England and Wales would also be helpful, if the assessor is in a position to comment on that matter.
4. Decisions on whether an applicant should be recommended for appointment are made by an independent Selection Panel comprising retired judges, practising barristers and solicitors, and distinguished non-lawyers.
5. To be appointed, an applicant must demonstrate each of the competencies to a standard of excellence. The Competency Framework is attached at Annex A.
6. The Selection Panel bases its decisions on **evidence** of excellence drawn from the applicant's self-assessment, from the assessments provided by assessors listed by



the applicant, and from an interview with each applicant who is not excluded from further consideration on the basis of the assessments. The most important element is the evidence from assessors. The successful operation of the QC appointment system thus depends to largely on the evidence provided by assessors who have recent professional experience of seeing the applicant in practice.

7. It is important that the Selection Panel obtains the most accurate picture possible of each applicant's performance as an advocate. Accordingly, the Selection Panel would be very grateful if you could provide an assessment even you cannot be supportive of the applicant concerned.

Confidentiality

4. Assessments will be seen only by QCA staff and by members of the Panel. Assessments will *not* be made available to the applicant or to anyone else, either during or after the competition. Exceptionally, as part of an investigation arising from a complaint from an applicant, an assessment may be sought by the Queen's Counsel Complaints Committee. We will not supply assessments even to the Complaints Committee without obtaining your consent in advance. Assessments provided in the QC competition are exempt from the subject access provisions of the Data Protection Act.
5. Assessors are asked not to share their assessment with the applicant, even if the applicant asks to see it.
6. Generalised feedback will be provided to unsuccessful applicants to help identify the areas in which the applicant needs to demonstrate more evidence or further improvement. The feedback will reflect evidence given by some assessors, but care will be taken to avoid including identifying details, so that the source of any comments cannot be identified from the feedback.

Contact with applicants

7. Please do not take it amiss if an applicant did not seek your agreement to act as an assessor. Applicants are required to list a judicial and a practitioner assessor for each listed case and we advise applicants that they do not need to seek advance consent before listing a potential assessor.
8. We encourage applicants to send potential assessors as an aide-memoire copies of any written work the applicant did in the case. If you do not receive copies of any such written work when you would have expected to do so, please feel free to contact the applicant direct.
9. Applicants are told that they should not lobby for support, and in particular that they should not send material intended to be used as a draft of an assessment to potential assessors. Please notify the QCA Chief Executive (russell.wallman@qcappointments.org) if you should receive an approach of that nature.

Completing the assessment form

10. The Panel appreciates that most assessors will not be able to comment on every competency. You are asked to provide evidence only on those competencies where you have useful information for the Panel. If you have not had an opportunity to observe an applicant demonstrating a particular competency, please say so.
11. The examples listed in the competency framework are intended to illustrate the kinds of behaviour the Panel has in mind. Short statements such as 'excellent advocate', without supporting evidence, are not helpful to the Panel. Please comment on each competency of which you have knowledge indicating, with examples where possible, how well and to what extent that competency is or is not demonstrated.
12. The Panel is looking for succinct evidence, sufficient for it to be able to understand the reasons for your view on the applicant's demonstration of each competency. Lengthy description of cases is unnecessary.
13. If you have seen the applicant in cases in addition to those listed by the applicant, please do not confine yourself to consideration of the listed cases in completing your assessment. Evidence drawn from other cases of substance is equally valid, although where evidence is drawn from work done before 2017, it would be helpful if you could indicate that.

Cases of substance, complexity, or particular difficulty or sensitivity (Part 2, Q.2)

14. Please explain briefly why you consider a case was or was not a case of substance, complexity, or particular difficulty or sensitivity.

Competency A – Understanding and Using the Law

15. It is particularly useful for the Panel to have any evidence assessors may have about applicants' ability to deal with "new law", that is, either law in an area outside the applicant's usual specialism, or new developments in law. Experience shows that there is often a shortage of evidence on this aspect from assessors.

Other jurisdictions

16. If the law applied in a case to which your evidence relates was not that of England and Wales, or included elements of law from any jurisdiction other than England and Wales (including any other jurisdiction in the British Isles), then please make this clear on the form.

Competency B – Written and Oral Advocacy

17. It is helpful for assessors to separate their comments on written advocacy (Competency B1) from those on oral advocacy (Competency B2).
18. On Competency B2 (Oral advocacy) it would be helpful if assessors could state what aspects of an applicant's oral advocacy they have seen (eg. legal argument; cross-examination of lay witnesses) and if assessors could indicate how much they have seen in total of the applicant's oral advocacy.

Competency C – Working with Others

19. The "working with others" competency encompasses working constructively with the judge or arbitrator and court staff, as well as with fellow advocates and clients. Part

of the requirement under this competency is that the applicant should uphold the standards of behaviour expected of advocates.

20. It is particularly useful for the Panel to have any evidence assessors may have about the extent to which applicants demonstrate leadership of the sort expected of silks. This is another area where there is often a shortage of evidence from assessors.

Competency D – Diversity

21. The purpose of the diversity competency is to ensure that all those recommended for appointment have a good understanding of diversity issues, that they demonstrate appropriate behaviours in their professional life, and that they are proactive on diversity matters. The competency is not of itself intended to promote the appointment of under-represented groups. Accordingly, being a member of an under-represented group is not of itself evidence (or even an indication) that an individual meets the standard required on this competency.
22. The Panel understands that many judicial assessors may not be well-placed to comment on the diversity competency. It is perfectly acceptable to leave that section blank in those circumstances. However, where there **is** relevant evidence – such as the way in which an applicant dealt with the particular needs of an individual party or witness in court – it is useful to the Panel to have it.

Overall rating – (Part 4)

23. You are asked to give an overall rating of the applicant's suitability for appointment as silk based on their demonstration of those competencies on which you are able to comment. Please do not rate an applicant as "Clearly ready for appointment" unless you have seen the applicant perform very well in a case in which a silk might appropriately have been instructed. Subject to that, there is no need to give the applicant a lower rating simply on the grounds that your own knowledge of them is limited.
24. The different ratings are designed to focus clearly on whether the applicant should be appointed as silk. The Panel recognises that there will be many advocates who, although performing extremely well as junior advocates, nevertheless have not fully demonstrated the qualities required to justify appointment as silk. Those applicants should be rated "Possibly ready for appointment", or "Not yet ready for appointment".

Explanation of Overall Rating (Part 5)

25. Please briefly summarise the reason for your overall rating of the applicant. It would be particularly helpful if you could in this section indicate approximately how much (if any) exposure you have had to the applicant's oral advocacy.

Views of others (Part 6)

26. You are asked to give your assessment based solely on your experience of the applicant in their professional life, rather than reflecting the "general view" of an applicant in any particular community. However, if you have consulted others in preparing your assessment, please state whom you have consulted, the nature and extent of their experience of the applicant, and how far their experience coincides with or differs from your own.

Comparisons with other applicants



27. It is important that assessments deal only with the individual applicant concerned, rather than comparing the applicant with others in the same competition. Material in an assessment comparing an applicant with others is redacted before the papers are passed to members of the Selection Panel for grading.

Information for Assessors

28. For each applicant on whom the Panel is seeking an assessment you will have been sent an email or letter containing their details and a link to the assessor site. This contains details of the case(s) extracted from the application form, as provided by the applicant. The applicant's name appears in the email and in the site once entered. Your details will also appear.
29. You can complete the assessment form by logging into our assessor portal at <https://assessor.qcappointments.org/> with the details provided to you in the request email. If you would prefer to complete a Word version of the form, please contact the Secretariat. You may also complete the form in typescript or by hand. It would greatly assist the Panel if you would complete the form on a computer or in typescript.
30. If you would find it helpful to see examples of helpful assessments which the Panel has received in the past, specimen assessments can be provided by the QCA secretariat on request.

Previous assessments

31. If you have provided an assessment of an applicant in a previous QC competition, and have not seen them since, we will be happy to re-use that assessment. However, if you have more recent experience of the applicant, we would be grateful if you could complete a fresh assessment. We can on request wish send you a copy of a previous assessment to refresh your memory.
32. Because each competition is self-contained, it is preferable that Panel members should not be aware of whether an applicant has applied before. Accordingly, you are asked not to refer in your assessment to any previous applications which the applicant may have made.

Returning completed assessment forms

33. Please return your assessments by the date specified in the letter. We can almost always extend the time, but if you need more time, please let us know as soon as possible.
34. On-line forms will be received automatically when you click "Submit" on completion of your assessment. Assessment forms completed on the Microsoft Word form can then be emailed to assessments@qcappointments.org.
35. Completed hard copy or printed out assessments may be sent by post.



36. Forms submitted electronically will receive an automated response. We will acknowledge forms received through other channels unless you ask us not to do so.

Contacting us

37. Further information or assistance is available on the Queen's Counsel Appointments website - www.qcappointments.org. If you wish to contact us please use the details below. If your enquiry relates to a particular applicant, please give the applicant's name and ID.

Queen's Counsel Appointments

16 Red Lion Square, London WC1R 4QH

Telephone: 0207 831 0020

Email: assessments@qcappointments.org

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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.

<p>A. Understanding and using the law <i>Has expert, up-to-date legal knowledge and uses it accurately and relevantly, and becomes familiar with new areas of law quickly and reliably.</i></p> <p>Examples:</p> <ul style="list-style-type: none"> ✓ 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. <p>B. Written and oral advocacy <i>Subject to the advocate's duty to the court, 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.</i></p> <p>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.</p> <p>Examples (Written advocacy):</p> <ul style="list-style-type: none"> ✓ 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 	<ul style="list-style-type: none"> ✓ 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. <p>D. Diversity <i>Demonstrates an understanding of diversity and cultural issues, respects the needs and cultural wishes of others and is proactive in addressing the needs of people from all backgrounds and promoting diversity and equality of opportunity</i></p> <p>Examples:</p> <ul style="list-style-type: none"> ✓ 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
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<p>pursue and preparing alternative strategies.</p> <ul style="list-style-type: none"> ✓ Anticipates points that will challenge an argument <p>Examples (Oral advocacy)</p> <ul style="list-style-type: none"> ✓ 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. <p>C. Working with others</p> <p>Uphold the standards of behaviour expected of advocates and 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</p> <p><i>Examples:</i></p> <ul style="list-style-type: none"> ✓ 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. 	<p>reason, and responds appropriately and sensitively.</p> <ul style="list-style-type: none"> ✓ 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. <p>E. Integrity</p> <p><i>Is honest and straightforward in professional dealings, including with the court and all parties</i></p> <p>Examples:</p> <ul style="list-style-type: none"> ✓ 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. <p>QC Secretariat</p>
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