



# GUIDANCE FOR CLIENT ASSESSORS 2022

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

### Introduction

This document aims to assist professional and lay clients who have been asked to provide an assessment in the 2022 QC competition.

**The Selection Panel is keen to receive an assessment drawing on your experience of the applicant. For the Panel to get a rounded view of applicants it needs assessments which cannot be supportive (or not fully supportive) just as much as those which are supportive.**

### 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. 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.
3. To be appointed, an applicant must demonstrate each of the competencies to a standard of excellence. The Competency Framework is at Annex A.
4. The Selection Panel bases its decisions on **evidence** of excellence drawn from the applicant's self-assessment, information from assessors listed by the applicant, and an interview with each applicant who secures one. The most important element is the evidence from assessors. The success of the QC appointment system thus depends largely on evidence from assessors with recent professional experience of seeing the applicant in practice. Evidence of performance falling short of the required standard is as important as evidence of excellence.
5. Client assessors provide the Selection Panel with a unique perspective. A sentence of description about your practice (if you are a legal practitioner) and the extent to which you have worked with QCs on cases of substance would be helpful.



6. The Selection Panel must obtain the most accurate picture possible of each applicant as an advocate. The greatest help you could give is a forthright assessment even when it does not support the individual.

## **Confidentiality**

7. Assessments will be seen only by QCA staff and the Panel. Assessments will not be available to the applicant or anyone else, during or after the competition. Applicants will not even know the name of the author of an assessment, let alone its contents.
8. Exceptionally, as part of an investigation of a complaint from an applicant, an assessment might be sought by the Queen's Counsel Complaints Committee. We will not supply assessments even to the Complaints Committee without your consent in advance. Assessments provided in the QC competition are exempt from the subject access provisions of the Data Protection Act.
9. Please do not let the applicant know what you have written, even if s/he asks.
10. Unsuccessful applicants will get generalised feedback to help identify areas deficient in evidence or needing improvement. The feedback will reflect evidence from some assessors, but without identifying details, so the source cannot be identified from the feedback.

## **Contact with applicants**

11. 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 tell them they do not need consent before listing a potential assessor.
12. We encourage applicants to send potential assessors as an aide-memoire copies of any written work the applicant did in the case. If you have not received copies of any written work when you would have expected to do so, please feel free to contact the applicant direct to ask for this.
13. Applicants are told that they should not lobby for support, and in particular not to send potential assessors material intended as a draft assessment. Please alert the Chief Executive ([russell.wallman@qcappointments.org](mailto:russell.wallman@qcappointments.org)) if you get such an approach.

## Completing the assessment form

14. 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. If you have not observed an applicant demonstrating a competency, please say so.
15. The examples in the competency framework illustrate the kinds of behaviour the Panel has in mind. It is important that assessments include evidence, explaining why an applicant's work in relation to a particular competency was (or was not) good, rather than mere assertions about the applicant's performance. Short statements such as 'excellent advocate', without supporting evidence, are not helpful. Please comment on each competency of which you have knowledge indicating, with examples where possible, how well and to what extent it is or is not demonstrated.
16. The Panel is looking for succinct evidence, sufficient to understand the reasons for your view. Lengthy description of cases is unnecessary.
17. If you have seen the applicant in cases in addition to those listed by the applicant, please feel free to draw on those cases rather than confining yourself to consideration of the cases listed by the applicant. Where evidence is drawn from work done before 2019, it would be helpful if you could indicate that.

### Cases of substance, complexity, or particular difficulty or sensitivity

#### (Part 2, Q.2)

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

### Competency A – Understanding and Using the Law

19. It is particularly useful for the Panel to have evidence about applicants' ability to deal with "new law" – 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*

20. If you deal with a case in which the law was not that of England and Wales, or which included elements of law from any jurisdiction other than England and Wales (including in the British Isles), please make this clear on the form.

### Competency B – Written and Oral Advocacy

21. It is helpful for assessors to separate comments on written advocacy (Competency B1) from those on oral advocacy (Competency B2).
22. On Competency B2 (Oral advocacy) it would be helpful if assessors could state what aspects of an applicant's oral advocacy they have seen (e.g. legal argument; cross-

examination of lay witnesses) and how much they have seen in total of the applicant's oral advocacy.

### **Competency C – Working with Others**

23. The “working with others” competency encompasses working constructively with the judge or arbitrator and court staff, as well as with fellow advocates and clients.
24. It is particularly useful to have any evidence about the extent to which applicants demonstrate the leadership expected of silks. This is an area where there is often a shortage of evidence from assessors.
25. This competency also requires applicants to uphold the standards of behaviour expected of advocates so as to secure the confidence of the court and of fellow advocates. The Panel needs to be alerted to any failings in this regard, with evidence.

### **Competency D – Diversity**

26. The diversity competency aims to ensure that all those recommended have a good understanding of diversity issues, demonstrate appropriate professional behaviour, and 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.
27. 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. However, where an assessor **does** have relevant evidence – such as the way in which an applicant dealt with any particular needs of an individual party or witness in court –the Panel finds it useful.

### **Overall rating – (Part 4)**

28. 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 can comment. Please do not rate an applicant as “Clearly ready for appointment” unless you have seen him/her perform very well in a case in which a silk might appropriately have been instructed. Subject to that, there is no need for a lower rating simply because your own knowledge of them is limited.
29. The different ratings are designed to focus clearly on whether the applicant should be appointed. The Panel realises many advocates, although extremely effective juniors, have not fully demonstrated the qualities for appointment to silk. They should be rated “Possibly ready for appointment”, or “Not yet ready for appointment”.

### **Explanation of Overall Rating (Part 5)**

30. Please briefly summarise the reason for your overall rating. It would be particularly helpful to know approximately how much (if any) exposure you have had to the applicant's oral advocacy.

### **Views of others (Part 6)**

31. Your assessment should be based solely on your experience of the applicant in professional life, rather than the “general view” of the legal community. However, if you have consulted others, please identify whom you consulted, the nature and extent of their experience of the applicant, and how far their experience coincides with or differs from yours.

### **Comparisons with other applicants**

32. Assessments should deal only with the individual applicant, rather than compare the applicant with others in the competition. Material comparing an applicant with others is redacted before the Panel sees the papers.

### **Previous assessments**

33. If you have provided an assessment of an applicant in a previous QC competition, and not seen them since, we will be happy to re-use that assessment. However, if you have more recent experience we would appreciate a fresh assessment. We can on request send you a copy of a previous assessment.
34. Because each competition is self-contained, Panel members should not know of previous applications, so please help by not referring to any.

### **Information for Assessors**

35. For each applicant you will have an email or letter with their details and a link to the assessor site. This contains details of the case(s) extracted from the application form, provided by the applicant. The applicant's name is in the email and on the site. Your details will also appear.
36. You can complete the assessment form by logging into <https://assessors-2022.qcappointments.org> using the details in the request email. If you would prefer to complete a Word version, please contact the Secretariat. You can complete the form in typescript or by hand (although it helps a lot if you use a computer or typescript.)
37. We have helpful assessments from the past, and you can see them as well as specimen assessments. Just ask the secretariat.



## Returning completed assessment forms

38. It would help if you could return your assessment(s) by the date specified in the letter. We can almost always extend time, but if you need more, please let us know as soon as possible.
39. 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](mailto:assessments@qcappointments.org).
40. Completed hard copy or printed out assessments can be sent by post.
41. 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

42. Please contact the QCA Chief Executive by email or telephone if you would like information or assistance. We are always happy to help. Further information about the appointment process as a whole is also on [www.qcappointments.org](http://www.qcappointments.org).
43. Our contact details are 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](mailto:assessments@qcappointments.org)

or: [Russell.wallman@qcappointments.org](mailto:Russell.wallman@qcappointments.org)

**April 2022**



## Queen's Counsel Competition for England and Wales 2022 Competency Framework

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, uses it accurately, relevantly and effectively, 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.
- ✓ Makes effective use of case law and other sources in addressing legal issues which are not decided or settled.
- ✓ Shows depth of understanding of the legal principles and issues involved in a case.

### B. Written and oral advocacy

*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.*

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

*Upholds the standards of behaviour expected of advocates and acts so as to secure the confidence of the court and of fellow advocates; 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 throughout.*

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 a way that reflects appropriate consideration of perspective of everyone involved in the case.
- ✓ Where appropriate, refers to authorities adverse to the client's case and to arguments which unrepresented parties could properly advance.
- ✓ Is meticulous in making full and frank disclosure whenever appropriate.
- ✓ 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 but does not make assertions or allegations which are unsupported by a proper factual basis or (where appropriate) by instructions from clients.
- ✓ 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, 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*

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.

**QCA February 2022**

**Approved Assessment - Knowledge of the Applicant**

**1. Are there other cases on which you wish to draw in providing your assessment, in addition to those listed by the applicant? If so, please give brief details.**

No.

**2. Please confirm, with brief reasons, whether or not in your view each of the occasions mentioned by you or the applicant was a case of substance, complexity or particular difficulty or sensitivity.** Please indicate any that had unusual or challenging features.

The case, R was a substantive and novel application for judicial review that gave rise to some complex issues. The case was substantial because it dealt with an issue of racial discrimination within a police force and the errors involved in the investigation of those allegations. The case was opposed by a the majority of the interested parties (who were the officers alleged to have engaged in dissimilatory behaviour and been subject of an internal investigation). The issues spanned a number of years and involved Employment Tribunal proceedings, investigations and re-investigations. The subjects of investigation opposed the judicial review, adding a degree of complexity to the proceedings due to the number of interested parties, including the victim, who each had differing positions.

**3. Can you confirm the information given by the applicant about your contact in the cases(s) listed?**

The information provided is correct.

## Approved Assessment - Evidence of the competencies

### A. Understanding and using the law

The applicant displayed an incredibly detailed and intimate knowledge of the law relating to police internal investigations, complaints procedures, and the issues surrounding a public body judicially reviewing itself to allow it to retake a decision.

### B1. Written advocacy

The applicant produced a very detailed and comprehensive skeleton argument which set the tone for his oral arguments. He had an intimate knowledge of the materials and advised on the course of action ultimately taken. The detail and clarity of the applicant's written advocacy provided myself and the client with a high degree of trust in his abilities. He was able also to quickly deal with an application made by one of the interested parties for disclosure of privileged material prior to the hearing, including producing a further skeleton argument resisting the application.

### B2. Oral advocacy Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or negotiation

The applicant was a clear and competent oral advocate. He engaged productively with the judge's questioning throughout the hearing. He successfully argued the case, achieving the desired outcome. The applicant dealt well with issues that arose in the case, including an application by some of the interested parties for disclosure of privileged material (which he successfully resisted).

### C. Working with others

The applicant established a good and productive working relationship with myself and the other solicitors and with the client. The applicant had a productive relationship with the judge and the other parties representatives. In particular he was able to engage well with the victim of the alleged discrimination and victimisation's legal team in preparation for the hearing.

### D. Diversity

The case involved sensitive issues around race and bullying, the applicant was able to deal with these issues appropriately. I cannot give any details outside of the case referred to as I have not worked with him on other matters.

### E. Integrity

## Approved Assessment - Overall rating

**Overall rating** I believe this applicant's demonstration of the competencies to be:

Ready, Possibly ready

**Explanation of overall rating** Please use this section to give a brief justification of your overall rating in Part 4. You may also use this section of the form to give any additional information that will assist the Selection Panel.

In the case the applicant and I worked on I found him to be a clear and compelling advocate who was able to meet timescales and engage productively with the client when required. The applicant displayed an incredibly detailed understanding of the area of the law at issue in that case and a clear ability to deal with new and emerging facts and problems that arose during the lead up to and during the hearing. On that basis I am comfortable with my rating that the applicant is either possibly ready or ready for appointment, although I note that I have only worked with him directly on one case.

#### **Approved Assessment - Views of others**

If you have consulted others in preparing this assessment, please state who 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.