



Queen's Counsel
Queen's Counsel Competition for England and Wales 2017

GUIDANCE FOR ASSESSORS

INTRODUCTION

- 1) This guidance is intended to assist you in providing an assessment for one or more applicants for appointment as Queen's Counsel.

SUMMARY

The key points are:

- The Panel wants your frank, discriminating and succinct views on the applicant's demonstration of the competencies, supported by evidence from your recent professional contact with him or her.
- It is important that your views are supported by evidence. A bare comment, even of "excellent", is of limited value to the Panel.
- We do not need lengthy descriptions of cases. Please do not describe a case in detail unless that is essential to explain your comments on a particular competency. Around 10 lines of typed text on a competency are generally ample.
- Please give evidence on each competency, if you can. If you have no relevant evidence on the applicant's demonstration of a particular competency, please say so. This will not be held against the applicant.
- In respect of integrity (Competency E), the Panel assumes that advocates meet the standard required unless there is evidence to the contrary. Accordingly, the Panel only needs information from assessors about that competency if you have any relevant negative evidence.
- If the applicant has approached you before completing the application, please do not feel compromised by that – the Panel needs your frank views about the applicant.
- Assessments are not shown to the applicant or to other assessors. Information held for the purposes of the QC appointment system is exempt from the subject access provisions of the Data Protection Act.
- If you are unable to give an assessment on an applicant, please tell us as soon as possible.
- **We can usually accommodate requests for more time, but if you need more time please contact us as soon as possible.**
- Assessments can be completed on-line at <http://assessor.qcappointments.org> or assessment forms can be downloaded from the QCA website www.qcappointments.org.

BACKGROUND

- 2) The award of Queen's Counsel is intended to recognise excellence in written and oral advocacy in cases of substance in the higher courts of England and Wales. Although applicants whose practice is primarily outside the higher courts of England and Wales are entitled 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 that they are or would be excellent in relation to advocacy in cases of substance in the higher courts of England and Wales.
- 3) To be appointed, an applicant must demonstrate each of the competencies to a standard of excellence. The Competency Framework applicable to the Competition for 2017 is attached at Annex A.
- 4) The successful operation of the QC appointment system depends to a large extent on the information which is provided by assessors who have recent professional experience of seeing the applicant in practice. Assessments are taken from three categories of assessor who can speak to the applicant's abilities from different perspectives: (a) judicial, (b) practitioner (i.e. fellow advocate) and (c) client.
- 5) All applicants have been asked to list judges or arbitrators, practitioners and professional clients who will have seen them recently in cases of substance, complexity, or particular difficulty or sensitivity. The applicant '*nominates*' one judicial, one practitioner and one client assessor whom the Panel undertakes to approach wherever practicable. The Panel selects further assessors from amongst those given by the applicant in order to obtain a rounded picture of his or her practice. The Panel does not approach all those mentioned in the application form, nor does it approach anyone who has not been listed by the applicant concerned.

CONTACT WITH APPLICANTS

- 6) If an applicant has approached you as a potential assessor before completing their application, please do not feel in any way compromised by that – the Panel wants honest and frank views about the applicant. Equally, please do not take it amiss if an applicant has not sought your agreement to act as an assessor. While we do recommend applicants to ask assessors who they wish to list as their first nominated assessor (see paragraph 5), applicants are advised that they do not need to seek advance consent or to tell other assessors that they have been listed in the application form.
- 7) Indeed, applicants are told that they should not solicit support, although there is no objection to a potential applicant informing an assessor of their intention to apply, or to sending prospective assessors copies of written work as an aide-memoire. Applicants are told that QCA will supply the information from the application form that assessors will need. The Panel recognises, however, that applicants may want to seek advice on whether they are yet ready to apply for silk, and that those best placed to provide such advice may well be potential assessors.

CONFIDENTIALITY

- 8) Assessments will be seen only by the office staff and by members of the Panel. Assessments will *not* be made available to the applicant or to other assessors, during or after the competition, even when applicants have been successful. Exceptionally, as part of an investigation arising from a complaint, an assessment may be sought by the QC Complaints Committee. We will seek assessors' consent before supplying a copy of any assessment to the Complaints Committee. Assessments will not be shared with anyone else.

- 9) Applicants sometimes ask assessors to let them have a copy of any assessment they may provide. The Panel would be grateful if you did **not** share your assessment with the applicant, whatever its contents. If it became commonplace for assessments to be shared with applicants, it would be more difficult for those assessors who prefer not to copy their assessment to the applicant. That in turn would undermine the Panel's ability to get the frank assessments from assessors on which the effectiveness of the current appointment system depends.
- 10) Generalised feedback will be provided to unsuccessful applicants in order to help identify the areas in which the applicant needs to demonstrate more evidence or further improvement. This may reflect comments given in your assessment, but care will be taken to ensure so far as possible that their source cannot be identified from the feedback given to the applicant.

CASES OF SUBSTANCE, COMPLEXITY, OR PARTICULAR DIFFICULTY OR SENSITIVITY (PART 2, Q.3)

- 11) Precisely what constitutes a case of substance, complexity, or particular difficulty or sensitivity is a matter for your own judgement, but please explain why you consider a case falls into such a category.

WHAT THE PANEL IS SEEKING - EVIDENCE OF THE COMPETENCIES (PART 3)

- 12) **You are only asked to provide evidence on those competencies where you have useful information for the Panel.** You are of course welcome to provide evidence on each of the five competencies if you **are** able to do so. The Panel appreciates that most assessors will not be in a position to comment on every competency. If you have not had an opportunity to observe an applicant demonstrating a particular competency, please say so.
- 13) The Panel wants your **frank and discriminating views**, supported by examples drawn from your recent professional contact with the applicant. The Panel relies on what assessors tell us. We therefore encourage each assessor to be as frank as they can.
- 14) 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 that you can, indicating, with examples, how well and to what extent that competency is or is not demonstrated.
- 15) The Panel is looking for succinct evidence, sufficient for it to be able to understand your view on the applicant's demonstration of each competency, and your reasons. Experience suggests that around 10 lines of typed text on a particular competency are generally ample. Lengthy description of cases is unnecessary and is not likely to be helpful to the Panel.
- 16) In short, the Panel would like to know what the applicant did, how well or how badly the applicant did it, what the circumstances were – especially if these presented a particular challenge for the applicant – and what the outcome was. The Panel would also value your own view as to whether the applicant merits appointment.
- 17) The Panel is looking for recent evidence. It should so far as possible relate to substantial cases which occurred in the last two to three years. If you wish to refer to a case before 2014 please make that clear. You need not confine your remarks to the cases referred to by the applicant: evidence drawn from other cases of substance or complexity is equally welcome.

18) The Panel considers each applicant on the evidence of his or her demonstration of each competency, without regard to age, disability (including mental health), gender reassignment, marriage and civil partnership, pregnancy and maternity, race (including ethnic or national origins, colour and nationality) religion or belief (including lack of belief), sex, sexual orientation or any other extraneous factor such as educational background, political affiliation, carer responsibilities, career breaks, part-time working or earnings. Assessors are asked to consider each applicant on the same basis.

UNDERSTANDING AND USING THE LAW (Competency A)

19) It is particularly useful for the Selection 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

20) If the law applied by the court or tribunal 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.

WORKING WITH OTHERS (Competency C)

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

OVERALL RATING (PART 4)

22) You are asked to give an overall rating that best reflects the applicant's demonstration of the competencies (on which you are able to comment). There is no need to give the applicant a lower rating simply on the grounds that your own knowledge of them is limited. However, it is important to remember that the overall rating sought is not of the applicant's performance as a junior advocate; it is of their suitability for silk. It is perfectly possible for someone to be a very good or even an excellent junior, and yet not be suitable for silk. We have found in previous years that assessors give extremely positive gradings to applicants. While in 2016 the Panel recommended 44% of all applicants, 90% of assessments rated the applicant as 'excellent' or 'very good' (in other words suitable for appointment). It would be helpful to the Selection Panel if assessors made greater use of the full range of ratings in appropriate circumstances.

VIEWS OF OTHERS (PART 6)

23) It is important that the Selection Panel bases its decisions on first-hand evidence relating to each applicant. You are therefore 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 in the box in Part 6 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. Again, the Panel is looking for evidence with examples drawn from recent professional contact with the applicant

COMPARISONS WITH OTHER APPLICANTS

24) There are no quotas for appointment, either in particular specialisms or in particular regions of the country. All those applicants, and only those applicants, who meet the

competencies to the required standard will be recommended for appointment. Each applicant is thus considered on their own merits, rather than in comparison with others. It is important that assessments likewise deal only with the individual applicant concerned, rather than comparing him or her with other applicants in the same competition. The QCA Secretariat will redact material comparing an applicant with others, including material based on the collective view of a group of assessors, before the papers are passed to members of the Selection Panel for grading.

ASSESSMENT FORM AND OTHER INFORMATION FOR ASSESSORS

- 25) For each applicant on whom we are seeking an assessment you will have been sent a sheet headed "Section H Assessors – Information for Judge/Arbitrator [or Practitioner or Client, as appropriate]" which is extracted from the application form, and contains details as provided by the applicant. The applicant's surname generally appears at the foot of the page. Your own name appears at the top of the page: this information is simply to assist the office in sending you the right page.
- 26) We also provide on our website <http://assessor.qcappointments.org> an online version of the assessment form which can be used by entering the relevant Applicant ID and Assessment Code provided in our request letter. On our website there is also an electronic (Microsoft Word) version of a blank assessment form, which can be saved to your own computer for completion. 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. Paper copies of the assessment form are also available from the Secretariat on request.

ASSESSORS FROM OUTSIDE ENGLAND AND WALES

- 27) The Selection Panel welcomes assessments from judicial, practitioner and client assessors outside England and Wales where appropriate, and is grateful to those assessors for their help with the process. However, it is important to remember that the scheme for appointing QCs in England and Wales is designed primarily to identify advocates who are excellent in relation to cases of substance before the higher courts of England and Wales.
- 28) Accordingly, it would be particularly helpful if assessors from outside England and Wales could where relevant include in their assessment a comment on the extent to which the requirements of oral advocacy in the forum from which the assessment arises are comparable with the requirements in the higher courts of England and Wales, if the assessor is in a position to comment on that matter.

UNABLE TO GIVE AN ASSESSMENT ON A PARTICULAR APPLICANT

- 29) If you are unable to give an assessment on any applicant, please tell us as soon as possible so that we can approach another assessor in your place. The Panel recognises that an assessor named by an applicant will not always be in a position to provide an assessment. A decision not to give an assessment will not affect the Panel's view of an applicant.

PROVIDED AN ASSESSMENT LAST YEAR

- 30) Assessments provided in a previous competition are not generally taken into account. If an applicant has applied before, we ask you to give a new assessment for the current competition. However, if you gave an assessment in 2016, the Panel will be willing to accept it if you so wish, provided that you confirm that you have no more recent experience of the applicant.

ALLEGATIONS OF MISCONDUCT

31) A concern expressed by an assessor amounting to an allegation of professional misconduct cannot be taken into account by the Panel unless, with the consent of the assessor, it has been put to the applicant, who will be given the opportunity to provide the Panel with an explanation. Accordingly, if you do need to refer to a matter of that sort, it would be helpful if you could do so in terms which you are willing for us to put to the applicant. The QCA secretariat does as a matter of course consult the records held by the Bar Standards Board and the Solicitors Regulation Authority for details of professional disciplinary matters concerning all applicants.

DEADLINE AND RETURNING COMPLETED ASSESSMENT FORMS

32) Please return your assessments by the date specified in the email/letter. If you need more time, please contact us as soon as possible.

33) On-line forms will be sent to us automatically when you click the 'Submit to QC Appointments' button. Assessment forms completed on the Microsoft Word form need to be saved on your computer first. They can then be emailed to assessments@qcappointments.org. If you email the form to us, there is no need for a signature, but we need to be confident about the source of the assessment. A code number appears against the name of each applicant on the list we have sent you. Please enter the code on Page 1 of the assessment form, in the box marked 'Assessment Code'.

34) Completed hard copy or printed out assessments may be sent by DX or Royal Mail.

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

FEEDBACK

36) We value feedback on all aspects of the process at any time. Such feedback will not affect the consideration of any application. We will also conduct a survey of assessors soon after we have concluded the process of assessment collection.

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.

CONTACT DETAILS

Telephone: 0207 831 0020

Email: enquiries@qcappointments.org

Email for return of assessments: assessments@qcappointments.org

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ANNEX A - Competency Framework for Queen's Counsel Competition for England and Wales 2017

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.