



Proposed changes to the QC appointment scheme: Report on consultation

Introduction

1. The Bar Council and the Law Society are extremely grateful to all those who responded to the two consultation papers issued earlier this year on proposed changes to the QC appointment process – “listing of cases and assessors” and “character, conduct and integrity”. The professional bodies have considered the responses to the consultation very carefully, and have as a result made significant changes to their original proposals. This note sets out the changes that the professional bodies intend to introduce, and explains why they decided not to proceed at this stage with the other proposals in the consultation papers. The professional bodies intended to implement the changes in time for the 2019 competition.

Summary

2. In summary, the professional bodies intend to
 - require applicants to list a prospective assessor in each of the judicial, practitioner and client categories from each of their listed cases.
 - widen the definition of the advocacy, working with others and diversity competencies to ensure it is clear that they encompass a requirement to act co-operatively with the court and their opponents.

Listing of Cases and Assessors

3. At present, applicants are expected to list eight judges or arbitrators, six fellow advocates and four clients as prospective assessors. The professional bodies have decided that in future applicants should be expected where possible to list as potential assessors a judge, a practitioner, and a client from each of their listed cases. Applicants would naturally not be expected to list a judge if the case concerned had no judicial involvement, and would not be expected to list a practitioner if no other advocate was involved in the case.
4. There are two main reasons for this change. First, although there is no requirement to do so, under the present arrangements it is commonplace for applicants to ask assessors in advance if they are willing to provide an assessment. This enables applicants to get a sense of whether the assessor is likely to provide a favourable assessment – any reluctance to provide an assessment being interpreted as a discouraging sign. That practice may disadvantage prospective women applicants who (according to independent research carried out for QCA) are typically more reluctant than male applicants to ask judicial assessors in advance if they are willing to provide an assessment.

5. Secondly, the change will increase the choice of assessors available to the Selection Panel, and will to that extent reduce the scope applicants may have to provide an unduly favourable view of their performance by ensuring that judges, fellow advocates or clients who have a less favourable view of their performance are not listed as assessors.
6. It will remain the case that applicants are entitled to nominate an assessor in each of the judicial, practitioner and client categories, with the guarantee that the Selection Panel will seek an assessment from the nominated assessor.
7. The professional bodies have decided not to proceed at this stage with the proposal that applicants should be expected to list all their cases of substance over a prescribed period, rather than to select 12 cases to list. The preponderant view from those responding to the consultation paper was that that proposal would have a deterrent effect on prospective women advocates, because it would be understood as expecting applicants to list more cases than at present. Since a higher proportion of women than of men have difficulty in listing 12 cases of substance, this proposed change was thought likely to disadvantage prospective women applicants. The professional bodies had not intended to require applicants necessarily to list more than 12 cases – the intention was simply that applicants should list whatever substantial cases they had. However, the professional bodies recognise the risk that the change might have damaging effects from the perspective of diversity for the reasons cited, and have therefore decided not to proceed with that proposal at the present time.

Character, conduct and integrity

8. The professional bodies have decided to amend the definitions of the “advocacy” “working with others” and “diversity” competencies in order to make it clear that unsatisfactory behaviour by an advocate relevant to one of those competencies should be recorded by assessors under the competency concerned, rather than merely under the “Integrity” competency. This proposal was widely supported in the consultation.
9. The professional bodies have also decided to amend the definition of the “integrity” competency, although in a different way to what was originally proposed. The definition will be amended to make clear that the integrity competency is concerned primarily with matters of professional misconduct. As at present, all matters raised under the Integrity competency will be put to applicants before they can be taken into account by the Selection Panel.
10. The professional bodies do not intend to extend the practice of adverse comments being put to applicants for comment beyond the integrity competency. To do so would be inconsistent with the professional bodies’ wish that the Selection Panel should be able to take account of unsatisfactory behaviour, since experience shows that assessors will virtually never agree to any matters they raise under the integrity competency being put to applicants.



11. Applicants will continue to have the protection provided by the policy of the Selection Panel that a single adverse comment from an assessor is never regarded as determinative, however eminent the assessor.
12. In light of the responses to the consultation, the professional bodies have decided not to make any changes at this stage to the extent to which unsatisfactory behaviour outside the field of advocacy not amounting to professional misconduct is taken into account; nor to widen the range of people from whom input is sought in respect of each applicant. The general view from those responding to the consultation was that although there were some advantages from widening the range of those from whom input was sought on each category, the risk of that leading to unfair prejudice to some applicants outweighed the potential benefit. The professional bodies have also decided not to seek to widen the grounds on which existing QCs may be at risk of having the designation removed.

Next steps

13. The professional bodies will work with the Queen's Counsel Selection Panel on amendments to the definitions of the competencies to give effect to these decisions. The Selection Panel will prepare detailed guidance in order to implement the decision that applicants should list a prospective assessor in each category from each case, and that guidance will be included in the Guidance for Applicants in the 2019 competition.