



**All applications must be received by Queen's Counsel Appointments (QCA) by 5pm on 28 March 2019. The Panel will not consider applications received after this time.**

***About this Guidance***

This Guidance is divided into two parts, together with two appendices.

**Part One** provides an overview of the way in which the competition will be conducted and what is required for an applicant to be recommended for appointment.

**Part Two** contains detailed Notes for Guidance on completion of the application form.

**Appendix A:** The Competency Framework

**Appendix B:** Guidance on Handling Issues of Character and Conduct

**You are advised to carefully read both parts of this guidance and the appendices before starting to complete your application form - and to refer to the individual Guidance Notes as you complete the application form.**



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**Part One**

**Introduction**

1. The purpose of the QC scheme is to identify for the benefit of users of legal services those advocates who are best qualified to represent clients in legal disputes of particular difficulty, complexity or sensitivity in the higher courts of England and Wales or in equivalent forums.

2. The award of Queen's Counsel is made for excellence in advocacy in cases of substance in the higher courts of England and Wales or in tribunals, arbitrations or other forums. All applicants must hold rights of audience in the higher courts and a current practising certificate. Applicants are judged against a Competency Framework (at Appendix A). To recommend appointment, the Queen's Counsel Selection Panel is looking for strong and consistent evidence of excellence in each of the competencies in cases of substance, complexity, or particular difficulty or sensitivity.

3. The advocacy may be written or oral but must relate to developing and advancing a client's case to secure the best outcome for the client in a dispute. That outcome may, for example, be secured through arbitration, court determination or a settlement agreement. There are no age requirements for applications; however, it is unlikely that you will have acquired the necessary skills and expertise for appointment without extensive experience in legal practice.

4. For the purposes of the QC Appointment Scheme, an excellent advocate is one who, in particularly difficult, complex or sensitive cases in the field in which he or she practises:

- is up to date with the law, and able rapidly to apply the law to the facts of the case concerned;
- demonstrates that understanding through their written and oral advocacy – and is able to be persuasive on matters both of fact and law;
- conducts themselves in relation to their client, their opponents and the court in an exemplary fashion;
- demonstrates an excellent understanding of diversity and a commitment to improving diversity within the legal profession.

5. The Selection Panel wishes to ensure that excellent higher courts advocates can secure appointment as QC whatever their area of specialism. Accordingly, the Selection Panel is flexible on such matters as the number of cases to be listed by applicants, provided there is a proper explanation for any shortfall, and subject to the over-riding requirement that no applicant can be recommended for appointment unless there is compelling evidence of their excellence in relation to all the competencies.

**Selection Process**

6. The summary of the Process (i.e. the way the competition will be conducted) has been agreed by the Law Society and the Bar Council and approved by the (then) Lord Chancellor. This is available on our website at [www.qcappointments.org](http://www.qcappointments.org)

7. Decisions in relation to applications, and the issuance of guidance for applicants and for assessors, are the responsibility of a Selection Panel, supported by



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a Secretariat. The Selection Panel and the Secretariat are independent of the General Council of the Bar, of the Law Society and of the Government. The Panel is made up of a retired senior judge, senior lawyers (including both barristers and solicitors) and distinguished lay (not legally qualified) people.

The Panel members who will make decisions in relation to the 2019 competition are:

- Sir Alex Allan (Chair)
- Sir Christopher Clarke
- Dr Douglas Board
- Wanda Goldwag
- Celia Hughes
- Rachel Langdale QC
- Edward Nally
- Penelope Reed QC
- Dr Maggie Semple OBE
- Monisha Shah

8. The process for selecting QCs is based on evidence. Two Panel members (one lay and one legally qualified) will review each application on the basis of the list of important cases, narrative description of practice and self-assessment (from the application form), and the assessments from judicial, practitioner and client assessors, to establish a preliminary view on the evidence. All applicants will then be considered by the full Panel. Only those applicants in respect of whom it appears to the Panel, having considered the evidence from assessors, that there is a reasonable prospect of being recommended for appointment will be invited to interview. The remaining applicants will be notified that they have been unsuccessful. Interviews are conducted by one lay and one legally qualified Panel member. Decisions on which applicants should be recommended for appointment are made by the full Panel. The list of recommended applicants will be passed to the Lord Chancellor. All unsuccessful applicants will receive personal feedback on their application.

9. In order to be appointed, applicants must demonstrate strong evidence of excellence in **both** Competency A (Understanding and Using the Law) **and** Competency B (Written and Oral Advocacy). They must also demonstrate “**strong** evidence of excellence” in either Competency C (Working with Others) or Competency D (Diversity) and “evidence of excellence” in the other competency.

10. The Selection Panel considers evidence from the applicant's self-assessment, from the assessments received from assessors, and for those applicants who are interviewed from the interview. In respect of Competencies A and B, the evidence from assessments is the most significant element in the Panel's decision making. The Panel does not usually consider it appropriate to give more weight to evidence from a 40 minute interview than to the views of assessors who may have seen the applicant over a considerable time. The interview is thus primarily used to test the evidence from the assessments, and in some cases to resolve uncertainties arising from that evidence. Evidence from assessors is also important on Competencies C and D, but in practice there is often much less evidence from assessors on those competencies, in particular on Competency D. It is thus commonly the case that evidence drawn



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from the interview plays a more significant part in the Panel's decision making in relation to Competency C and, in particular, Competency D.

11. Applicants may also find it helpful to read the Selection Panel's report on the 2018 QC competition, which is published on the QCA website [www.qcappointments.org](http://www.qcappointments.org).

### **Equal Treatment of Applicants**

12. The Panel is committed to equality of opportunity in the appointments process. Applicants who meet the standard of excellence required of Queen's Counsel will be recommended for appointment on merit, regardless of 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), gender, or sexual orientation (in accordance with the principles set out in the Equality Act 2010) or any other extraneous factor such as educational background, political affiliation, carer responsibilities, career breaks, part-time working or earnings. Any information which is provided for purposes of monitoring data (Section J of the application form) will not be provided to the Panel and will only be used for statistical purposes in evaluating the process as a whole.

13. The Panel is particularly committed to ensuring that potential applicants who have a disability are not disadvantaged in the application process. Any applicant with particular needs should contact the Secretariat, who will make every effort to assist. For instance, QCA will, on request, fund the assistance of a reader, or make the application form available in Braille for visually impaired applicants.

14. There are no quotas of any kind. All applicants are judged individually against a standard of excellence, supported by evidence.

### **Demonstration of the Competencies**

15. The Panel will be looking for evidence of your demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity, in relation to the law and courts of England and Wales (or in international courts or tribunals in respect of law applicable in this country). The application form is intended to help you present this effectively and succinctly. It does this by inviting you to provide:

- A list of your most important recent cases, ideally 12 cases;
- A narrative description of your practice;
- Your self-assessment of your demonstration of each of the competencies in such cases;
- The names of potential assessors who have seen you in action in such cases.

16. Applicants should note that Panel members consider it inappropriate to have personal contact with applicants in relation to their application for silk once the application has been submitted. Any enquiries an applicant may have should be raised through the QCA Secretariat.



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**Applicants Practising Outside the Higher Courts of England and Wales**

17. The QC appointment system is designed primarily to identify excellence in advocacy in the higher courts of England and Wales. The competency criteria have been devised by reference to the attributes, skills and behaviours required by an excellent advocate in the higher courts of England and Wales. Advocates whose practice is primarily elsewhere are welcome to apply, provided they hold rights of audience in the higher courts of England and Wales and can demonstrate that they fulfil the competence criteria, at a level of excellence, by reference to relevant recent evidence. However, applicants can only be recommended for appointment if the Panel is satisfied that they are or would be excellent in relation to advocacy in the **higher courts of England and Wales** and so evidence which comes from courts or tribunals other than those courts will only be relevant if and to the extent the Panel can be satisfied that it demonstrates competencies which are relevant to practice in England and Wales. (For example, evidence of good advocacy in a purely written jurisdiction could not provide relevant evidence of competency in oral advocacy; evidence from a jurisdiction in which advocates are rarely if ever asked questions by the tribunal could not provide relevant evidence of ability to handle such questions, which is a necessary aspect of competent oral advocacy in the higher courts of England and Wales). Applicants should give careful thought to the extent to which assessors they list drawn from advocacy in a jurisdiction other than the courts of England and Wales would be able to provide evidence which is relevant in demonstrating excellence in relation to advocacy in those courts.

18. The Panel may be satisfied that applicants satisfy the criteria where it considers that the procedure in the forum in which the applicant predominantly practises is sufficiently similar to the procedure in the higher courts of England and Wales for the inference to be drawn that excellence in that forum is evidence of excellence in the courts of England and Wales, and there are assessments from assessors on whom the Panel can confidently rely. That may apply, for example, to those who act as advocates primarily in arbitration proceedings conducted under English law, or to applicants practising in certain other common law jurisdictions.

19. Applicants may also be recommended for appointment where there is evidence of some aspects of excellent advocacy from the forum in which they principally practise and evidence of the other necessary attributes of excellent advocacy from some other forum. For example, an advocate who principally practises in a jurisdiction where judges do not generally ask questions of advocates orally may be recommended for appointment if there is also evidence of excellence in relation to that aspect of oral advocacy from the applicant's practice in the courts of England and Wales (if any), or from some other forum in which that skill can be demonstrated. However, some evidence of evidence in that aspect of advocacy is necessary, since answering questions from the tribunal is an essential element of excellence in advocacy in the courts of England and Wales.

20. It is the applicant's responsibility to ensure that the assessors listed can between them provide evidence to demonstrate excellence in relation to all the necessary attributes of excellent advocacy in his or her field of specialism, in proceedings in the courts of England and Wales. Where the Panel cannot be satisfied that an applicant is or would be excellent in relation to proceedings in the higher courts of England and Wales, the Panel will not be able to recommend the applicant



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concerned for appointment, even if the applicant's excellence in relation to cases in the forum in which they primarily practise is beyond doubt.

### **Submitting an Application**

21. All applications and the application fee must be received by QCA **by 5pm on 28 March 2019**. The Panel will not consider applications received after this time. Guidance relating to the application form is in Part 2 of this guidance.

### **Previous Applications and Outstanding Complaints**

22. Each competition is separate. Any previous applicant for silk may re-apply. Panel members will not be informed that an applicant has applied previously (although this may become apparent through, for example, comments by an assessor). The Panel will not refer back to your application, assessments or interview record from a previous competition. All assessments will be sought afresh, although assessors may direct the Panel to their assessment in a previous competition if they have not seen the applicant since. However, in the case of an issue of serious concern relating to a matter of character or integrity, the Panel may also have recourse to the earlier documentation in relation to that issue.

23. Any applicant who makes a complaint in relation to the 2018 competition may apply on the same basis as any other applicant. Panel members are not informed of the names of applicants with outstanding complaints during the competition (unless that arises from the Complaints Committee's consideration of the complaint). Where an outstanding complaint relates to the action or decision of a Panel member, the Secretariat will ensure that, so far as possible, that Panel member is not directly involved in the new application.

### **Confidentiality**

24. We will not disclose that an individual made an application without their agreement, except so far as is necessary for the application to be processed. If applicants need to contact us about their application once it has been received, they may be asked to verify their identity. We will not use the information applicants give us except in connection with the processing and consideration of applications or with the consent of the applicant.

25. At the end of the competition, we inform the Lord Chancellor (via his officials in the Ministry of Justice) the names of unsuccessful applicants. For successful applicants, we inform the Lord Chancellor of date of birth and basic professional information such as the applicant's Inn, chambers, firm or other employer. Apart from the date of birth, we may also publish that information, or disclose it to enquirers. We do not disclose applicants' self-assessments or the names of their assessors to anyone.

### **Handling of Information**

26. We will process applicants' details and other information provided about them, in a fair and lawful manner. However, applications for appointment to QC are exempt from the subject information provisions of the Data Protection Act 1998. QCA is not subject to the provisions of the Freedom of Information Act 2000.



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27. Information supplied by applicants, assessors or others may be held in electronic and paper form and will be used in relation to the QC competition and for quality control, training, review or audit purposes only. Our IT consultants may also have access to data in electronic form in the course of their work. Once the selection process has been completed the application form, paper copies of assessments and other paper records will generally be retained until after the subsequent competition and then destroyed.

### **Timetable**

28. There is no set date on which results of the competition will be announced but the Panel is aiming to complete the competition in time for the announcement of appointments to be made in December 2019, although this cannot be guaranteed. We will inform applicants of the outcome of their application before the public announcement.

### **Professional assistance with application and interview**

29. The Panel is aware that some applicants seek professional help in preparing their application form and/or for interview. The application procedure, including interview, is intended to allow excellent applicants to be identified without the need for outside assistance, although the Panel recognises that applicants may well find it helpful to seek advice from colleagues who have applied for appointment in recent years, where such advice is available.

30. The Panel seeks an authentic and nuanced picture of the applicant. At interview (if applicable), it does not necessarily expect a 'word perfect' performance, but wishes the applicant to show the same skills as they display in their day-to-day work, albeit in a different forum. 'Standard answers' (to provide what it is thought the Panel may want to hear) give a poor impression and may obscure the more positive evidence the applicant has to give.

### **Problems or Complaints**

31. In the first instance, a problem should be referred to the QCA Secretariat or, if appropriate, to the Chief Executive. In the event that the problem or concern relates to the Chief Executive or cannot be resolved by them, the problem may, once the outcome of the competition has been announced, be addressed to the Chair of the Panel. The Chair will not deal with any problems, complaints or correspondence from applicants until after the results of the competition have been announced. If an applicant is dissatisfied with the way in which the Chief Executive, or (where relevant) the Chair has dealt with a matter, he or she is entitled to refer the matter to the independent Complaints Committee.

32. The Complaints Committee is independent of the Queen's Counsel appointment process. Its role is to consider complaints raised by an applicant about the way in which the Panel and the Secretariat have handled an application, or concerns that the Panel has not applied its procedures properly. It is not able to substitute its opinion or judgement for that of the Panel. The Complaints Committee will consider complaints after the end of the competition. Complaints must be raised in writing no later than 60 calendar days following the announcement of the outcome of the competition.



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**Improving the Process**

33. Regardless of the outcome of applications, we value feedback on the application form, this Guidance, and on the operation of the process. We welcome feedback in any convenient form at any time and will take all feedback into consideration. It will be provided to the Panel only in anonymous form and will not have a bearing on the outcome of any application. We will also conduct a survey of applicants at the end of the competition.

**The Secretariat and further assistance**

34. Any prospective applicant who, having carefully read this Guidance and appendices, needs further information on anything regarding the application form or the appointments process, should contact:

Queen's Counsel Appointments  
3<sup>rd</sup> Floor, 73 Farringdon Road, London EC1M 3JQ  
Telephone: 0207 831 0020  
Email: [enquiries@qcappointments.org](mailto:enquiries@qcappointments.org)

35. Further information is also available on our website [www.qcappointments.org](http://www.qcappointments.org). Please feel free to contact us at any time if you have any questions about your application. The website will be updated as necessary and as the competition progresses.

*Part Two of the Guidance follows. It contains detailed guidance on the completion of the application form.*

**QC Secretariat**

February 2019



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## **Part Two**

*Detailed guidance on completing the application form is below. Relevant extracts from the Guidance may also be accessed from the button at the foot of each page of the online form.*

- 1. Letters Patent** are issued by The Queen to successful applicants. Please note that (unless you advise the Secretariat otherwise using Section G - *Other Information*) the surname and forename(s) which you provide will be the names which will appear on your Letters Patent if you are successful. For example, your professional surname will appear if you are a female advocate using your professional surname on your application form. If you have middle names which you omit from the application form, these will not appear on the Letters Patent. If we should ever send you correspondence in which there is an error in your name, please let us know in order to ensure that any error is not carried through to the Letters Patent.
- 2.** To prevent confusion with other applicants, we will use an **ID number** as well as your name. This is your Bar Council Reference or Law Society Roll number. It will help us if you are able to quote it if you telephone or write to us. If you do not know your Roll or Reference number, contact the records section of your professional body.
- 3.** When we contact you, we will use the **forename(s) and surname** and the email you supply on the registration page. If any of these details change during the course of the competition, please inform the Secretariat immediately.
- 4.** Ensure that the **email address** you wish to use is regularly monitored. We will use this when we need to contact you, for example to arrange an interview or to give information from time to time on the progress of the competition. You may also wish to ensure that @qcappointments.org is set as a 'safe sender'.
- 5.** You are invited to indicate your **preferred location for any interview** (if applicable). While your wishes will be taken into account, we cannot guarantee your preferred location. We expect to be holding interviews in London and Manchester. We currently expect interviews to take place from mid-September to early October 2019. We will try to avoid any dates on which you have unbreakable other commitments, but we cannot guarantee to do so. We will contact you in due course to give you more information about any interview.

The interview (if applicable) will be conducted by two members of the Panel (one lay and one legally qualified). The interview will seek further evidence as to the competencies to add to, or to help the Panel assess, the information already available from your application form and assessments. The Panel will probe for examples of excellence. The interview provides applicants with a further opportunity to 'shine'. It is not determinative, but one part of the evidence which will then be considered as a whole before the Panel reaches a decision.



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Applicants who are interviewed but are unsuccessful will receive written feedback at the conclusion of the competition.

### 6. Eligibility

To be eligible to apply for Queen's Counsel, you must either:

(a) Have been called to the Bar of England and Wales and hold a current practising certificate; or

(b) Be a solicitor of the Senior Courts of England and Wales, and hold higher court rights of audience and a current practising certificate.

7. Your **date of call or admission** may be used in determining the order in which you are called to make the declaration before the Lord Chancellor (if appointed to silk). If you cannot provide the exact date, you will be regarded as being called or admitted on the last day of the month or year given. The list of successful applicants published by QCA will be in alphabetical order.

8. We will inform all interviewed applicants of the outcome as soon as we are able to, probably in December 2019. The list of successful applicants will be published after The Queen has given her approval. That publication will also indicate the broad field(s) of law in which each the successful applicant practises. Publication of this information is not intended to restrict the fields in which the applicant appointed as QC may practise.

### 9. Character Issues

Before completing Section C, you should read Appendix B, which sets out the Panel's approach to handling issues of character and conduct.

Those appointed QC are expected to conduct themselves at all times in their personal and professional lives in a manner which will maintain public confidence. Section C requires you to declare any findings or pending matters relating to criminal convictions, complaints of professional misconduct, or other character issues. The Panel may take any such matters into account together with the evidence available to it on the competencies. You should inform the Secretariat as soon as there is the prospect of a complaint, criminal proceedings or other issue arises.

As regards **criminal convictions**, the Panel has agreed the following:

(a). Minor motoring offences where the applicant was not obliged to appear in court should be disregarded. However, any motoring offence resulting in disqualification, including under totting up, should be disclosed.

(b). Any conviction for an offence of dishonesty or resulting in a term of imprisonment will be of serious concern and is likely to preclude appointment.

(c). Any other unspent conviction or bind over will be considered on its individual merits.



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10. The Panel will only consider **cases of professional negligence** where an applicant has been at fault. Where a claim against you has been dismissed, it should not be disclosed. Where a claim has been settled, you should disclose the terms on which it was settled, and indicate clearly whether and to what extent you have accepted liability.

Findings of negligence and cases where the applicant appears to have been at fault will be assessed taking into account the degree of loss and the importance of the matter to the client, along with any other relevant factors.

11. **Findings of professional disciplinary fault** may be relevant to Competency E (Integrity), as showing prima facie a failure to honour professional codes. They will be treated on a case-by-case basis having regard to factors such as the penalty imposed; how recently the conduct occurred; and whether the client or any other person suffered loss or harm.
12. **Wasted costs orders** will be considered with regard to the reason given for the order being made, the amount involved and the length of time since the order was made.
13. Matters dealt with by a professional body. **If you are unsure whether or not to include a possible character issue, please contact the QCA Secretariat.**
14. Complaints which have been referred to the Legal Ombudsman **do not need to be disclosed unless they lead to action by a professional regulator.**
15. **A current or recent (i.e. within five years of discharge) Individual Voluntary Arrangement (IVA) or bankruptcy or other order** will be of concern. An undischarged order may well preclude appointment. An order which has been discharged is unlikely to preclude appointment, unless there is an indication of reckless conduct leading to the bankruptcy or IVA. However, all such cases will be considered with regard to the totality of the circumstances.
16. You should disclose any matter not covered by the above categories but which a reasonable person would regard as material to your application, having regard to the general criteria mentioned above. An example would be a foreign criminal conviction, or an order of a court or tribunal outside of the UK.
17. You should disclose anything else whether related to your professional or personal life, which could affect your standing or reputation, or could affect your suitability for appointment as QC.
18. **Panel member recusals**  
You should complete Section D and mark the box if you consider that a member of the Panel should be recused from considering your application. Applicants' reasons for suggesting recusal will be carefully considered, but it is for QCA to determine whether a Panel member should be recused. If a matter arises in the course of the competition which might make a recusal appropriate, please contact the Secretariat promptly.



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You should be aware that Panel members will also recuse themselves from dealing with a particular application if they feel it appropriate to do so by virtue of a close connection with an applicant, such as through being a member of the same chambers or firm, being a personal friend, or through significant close contact in the course of their recent professional life.

### 19. Section E: Summary Description of Practice

The award of silk is for advocacy in the higher courts of England and Wales. To merit recommendation for appointment, the competencies must be demonstrated to a standard of excellence in the applicant's professional life in cases of substance, complexity, or particular difficulty or sensitivity ('cases of substance').

The summary description of practice should set out your recent practice so that the Panel can understand the context in which it is considering your readiness for silk. The narrative description of practice, the case list and the self-assessment will be considered by the Panel. They are your opportunity to 'speak' directly to the Panel members to ensure that they have a clear picture of your practice and to show how you consider that you meet each of the competencies.

**Do** include:

- What you consider are your specialism(s) and what proportion of your professional time these represent.
- In which jurisdiction and/or court(s) you most regularly appear.
- An overview of the main types of cases you have been involved with in the last three years, including any cases of substance which are not amongst your listed cases.
- The frequency with which you attend court as an advocate.
- Why you consider the 12 cases you have named to be particularly important or noteworthy, with an indication of their outcome.
  
- A brief explanation if you need to go back further than the last three years (i.e. before 2016) to name your 12 important cases or if you are able to name fewer than 12 cases.
- Whether you normally appear for a particular party e.g. prosecution/defence.
- If you have not identified a judicial or practitioner assessor in any of your listed cases, please briefly explain why.
- Any reasons why your practice in the last few years may have been atypical.
- Any other relevant factual information.

**Do not** include in your narrative summary:

- References to you in legal directories or elsewhere.
- Assertions about your standing or reputation in the profession.
- Any reference to sitting as an arbitrator or in a judicial capacity.
- Details of your earnings.
- Any issues of character. (These should be identified in Section C.)

### 20. Competencies

#### General

The Competency Framework for the 2019 competition is at Appendix A. This provides a full description of each of the competencies, which are: Competency A



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(Understanding and using the law); Competency B (Written and oral advocacy); Competency C (Working with others); Competency D (Diversity); and Competency E (Integrity). In order to be recommended for appointment, you must demonstrate strong and consistent evidence of excellence across all of the competencies. The Panel reaches its conclusions on the *evidence* of the degree to which excellence in each competency is demonstrated.

Any concern expressed by an assessor amounting to an allegation of professional misconduct will not be taken into account by the Panel unless, with the consent of the assessor, it has been put to you in writing, to be given the opportunity to provide the Panel with an explanation in writing.

The Panel require your own assessment of how you demonstrate the competencies. Your self-assessment forms part of the evidence the Panel will consider in determining the outcome of your application.

Except in relation to the diversity competency, the Panel will in general wish to consider primarily examples drawn from your work as an advocate, rather than in any other capacity, including sitting as a judge or arbitrator, work on behalf of your professional body or similar, or work on legal textbooks.

It is important that you do not just re-state the competencies and the corresponding examples. Specific instances are required, not generalities. Merely asserting that you are always good at something or making reference to your reputation or the opinion of others is not of assistance. Instead, give examples that demonstrate your abilities, and explain how you did something and with what result.

The space in respect of each competency (and in respect of each of the written and oral advocacy aspects of Competency B) is restricted. You should be aware that each text box provided has a capped character limit to the size of the box shown, and this cannot be exceeded. **The Panel will not consider information continued on a separate sheet or elsewhere in the form.**

The self-assessment will not be shown to assessors.

### **21. Competency A: Understanding and using the law**

**Understanding and using the law** requires applicants not only to have up-to-date legal knowledge and to use it accurately and relevantly, but also to become familiar with new areas of law quickly and reliably. It is important that applicants should to the extent possible provide evidence in their self-assessment of their ability to deal with new areas of law, or new developments in their specialist field, in that way.

Where applicants practice in a field of law on which the Welsh Assembly has the authority to legislate, applicants will need to demonstrate knowledge of any relevant differences in the law between England and Wales.

### **22. Competency B: Written and Oral Advocacy**

**Advocacy** may be in written or oral form but must relate to developing or advancing a client's or employer's case to secure the best outcome in the dispute.



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That outcome may, for example, be secured through arbitration, court determination or a settlement agreement. Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or in negotiation.

The Panel looks both at the written (Competency B1) and oral (Competency B2) aspects of advocacy in deciding its view of the competency overall. The outcome for Competency B overall is not reached through aggregating or averaging the B1 and B2 scores, but reflects the Panel's judgement on the applicant's written and oral advocacy taken together, bearing in mind the relative importance of the two elements of advocacy in the applicant's practice.

There needs to be **some** evidence of excellence demonstrated in oral advocacy before an applicant can be recommended for appointment. However, the Panel recognises that not all applicants will have had the opportunity to undertake a great deal of oral advocacy and takes into account the type of practice in coming to its decision.

Except for applicants whose specialist area does not involve examination of witnesses, the Selection Panel places particular importance on applicants being able to demonstrate excellence in examination-in-chief and cross-examination of witnesses. It is unlikely to be sufficient for the applicant simply to state that they do not intend to deal with cases involving examination of witnesses.

There is no specific requirement as to the amount of written or of in-court advocacy so long as there is sufficient evidence for the Panel to reach a conclusion as to the extent to which an applicant demonstrates excellence in each of the competencies.

### 23. Competency C: Working with Others

**Working with others** covers both establishing productive relationships with others involved in the case, leading the legal team and demonstrating the behaviours expected of advocates in their dealings with others involved in the case. This includes high standards of professionalism and appropriate collaboration with and respect for all others involved in the case.

The Panel's experience is that applicants often deal with the first element of the competency in their self-assessment to the virtual exclusion of evidence about leadership. It is important for applicants to cover both aspects in their self-assessment.

The Panel is looking for evidence of leadership of the legal team of the sort which would normally be expected of Queen's Counsel. Experience of leading other advocates is potentially particularly helpful, but the Selection Panel recognises that in many fields of law it is difficult for junior counsel to get the opportunity to demonstrate that. Leadership of a small team, together with a clear understanding of what is required to lead a larger team effectively, can be sufficient to meet the requirements of this competency.

### 24. Competency D: Diversity

The purpose of the **diversity** competency is to ensure that all those recommended for appointment have a good understanding of diversity issues,



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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.

In providing evidence on diversity, you are not required to rely simply on your listed cases. You may draw on the wider aspects of your professional life, including work in chambers or your firm, or outreach work with schools from which pupils have not often entered the legal profession in the past, but evidence should still come primarily from your professional life. The diversity competency requires **both** evidence of an understanding of diversity issues, including those affecting the profession as well as those affecting users of legal services, **and** evidence of proactivity.

**25. Competency E: Integrity**

The highest standards of **integrity** are expected of all advocates. Whether or not seeking appointment as Queen's Counsel, all advocates should meet these standards, and should expect to do so as a matter of course as part of their professional life. The Selection Panel regards the integrity competency as being satisfied unless there is evidence to the contrary. There is thus normally no need to set out examples of how you meet this competency. However, if you have reported a matter under Section C (Character Issues), you may wish to explain here why you nevertheless consider that you meet the requirements of this competency. The text box will appear only if you answer "yes" to the question.

**26. Section G: Other information**

If you consider the Panel should be aware of your personal circumstances in order fairly to consider your application, you should outline all relevant circumstances in Section G. Please do not include information concerning character matters in this section.

This section must not be used to circumvent the character limit in other boxes. Material in this section which should have been included in other sections of the application form will not be passed to Panel members.

- 27.** If you have a **disability, and** wish the Panel to make adjustments in considering your application, you should include with the information at Section G, the nature of their disability, its impact on your practice and the adjustment(s) you are seeking. Referring to a disability on the monitoring form is not sufficient – the monitoring forms are not seen by members of the Selection Panel and are used for statistical purposes only. You can withdraw your consent to the use of any information about disability you provide in section G, or on the monitoring form, at any time.

**28. Section H: List of Important Cases**

In this section, you should provide a list of the 12 (if possible) most important cases that you have dealt with, generally in the **past three years** (i.e. in 2016 or more recently), together with a note of your role as an advocate in the case and the assessors whom you would expect to comment on them;



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This will not be shown to assessors.

If you wish to list a case, but its name or details are not in the public domain (e.g. because of security issues) or is confidential for other reasons, you should refer to the case details in such a way that it may be identified by your assessors, and so that the Panel can be clear when you are referring to that case.

The Panel is looking for your demonstration of the competencies in cases of substance. The Panel will have regard to the case, and your role in it, and the degree of challenge and how you dealt with it. The Panel draws a distinction between 'run of the mill' cases (which may have important consequences for the immediate client, but may present limited legal or other professional challenge) and those cases which present unusual, novel or unforeseen complexities or have consequences beyond the case.

It does not follow that all hearings in self-evidently important or substantial cases will themselves raise the same challenge or substance as the case as a whole. In order to provide useful evidence for the Panel it is necessary **both** for the case as a whole to be an important or substantial matter **and** for your role in it to have involved challenging and substantial work. It is important that you describe **your** role in the case, rather than merely explaining why the case itself was substantial.

Applicants are not excluded from consideration just because one or two of their cases do not appear to be "substantial" in this sense. However, evidence from cases which are not regarded as substantial will not be given as much weight as evidence from substantial cases, and if a significant number of the evidence on a particular applicant comes from cases which are not regarded as cases of substance, the Panel is not likely to feel able to recommend the applicant concerned for appointment.

Examples of the types of case which may present the characteristics of a case of substance are listed below.

- A substantive appeal before the Court of Appeal;
- A case that has been reported in a series of law reports;
- A test case on a point of law, or one that sets a precedent;
- A contested case determining the removal of a child from one or both parents;
- A case on which the employment of a workforce of a significant size depends;
- A planning or other public inquiry of national importance or raising complex issues of law.

However, the fact that a case includes one or more of the features above will not necessarily make it a matter of substance. The question of substance is a matter for the judgement of the Selection Panel, informed by the views of the assessors from the case.

It is important for the Panel to gain a rounded picture of your practice as a whole. It is therefore important that you should if possible list 12, rather than fewer, of the most important cases you have dealt with over the last three years. The Panel is aware that in some areas of specialism applicants may well have been engaged



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as advocate in fewer than 12 cases of substance over the previous three years. The Panel also recognises that some applicants may have had a career break for all or part of the period concerned.

The Panel wishes to ensure that applicants in those categories are not disadvantaged, subject to the over-riding need for the Panel to satisfy itself that there is sufficient evidence of excellence in each of the competencies before recommending an applicant for appointment. Accordingly, applicants may list cases which were concluded more than three years ago when they would otherwise be unable to list 12 cases of substance. However, applicants need to be aware that assessors' memories of cases from earlier cases may have faded.

Applicants may also list a case which is more than three years old (at applicants' own risk as to the memory of the assessors listed in respect of the case) if the case provides particularly powerful evidence of advocacy in a substantial case which cannot readily be replicated by a more recent case.

Applicants should explain fully if they are unable to list 12 cases. If no satisfactory explanation is given for any shortfall in cases, the Panel may conclude that the applicant prefers the Panel not to see a rounded picture of their practice.

**In listing cases, you need to consider the ability of the Selection Panel to obtain useful evidence about your performance in the case concerned. It is particularly important that there should be a judicial or a practitioner assessor (and preferably both) who will have enough information about your performance to provide a worthwhile assessment.**

**It is also important that your listed cases should enable you to name at least six different judicial and six different practitioner assessors. If the nature of your practice makes that impossible because your significant cases are all heard by a very small number of judges, please explain that on the application form.**

You may include cases of substance which settle or are otherwise resolved without a court determination, provided that they potentially provide evidence from assessors as to the degree to which you meet some of the competencies.

In addition to the names of your cases, give the dates of your involvement and indicate the role you played. A drop down menu provides for three options: 'was led', 'case leader' or 'alone' (ie sole advocate). Select the description that best matches the role you predominantly played. The Panel accepts that it is often difficult to reflect the complexities of the conduct of litigation in such brief terms. You can elaborate on your role if necessary in the narrative description of practice.

**Cases should in general each be listed only once: you should not, for example, list a case separately for a first instance hearing and an appeal unless substantially different issues arose. However, where different issues heard by different judges arose at the various stages of a case, it may be appropriate to list the case twice.**



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You should not list a case unless there will have been, by the time assessments are sought in April-June 2019, a sufficiently substantive hearing or other development to enable assessors to give a worthwhile assessment. It is undesirable for a high proportion of the listed cases to be still in progress unless there has already been one or more hearing of substance.



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**29. Section I Judicial, Practitioner and Client Assessors**

**General**

The Process requires you to provide the names of assessors in three categories: judicial, practitioner, and client. (The meanings of these terms are explained below.) In all we will be seeking nine assessments; four from judges/arbitrators, three from practitioners and two from clients, all in writing. Your assessors will be selected in connection with your 12 major cases, as set out in your list of cases (Section E). You may not subsequently put forward the names of additional assessors who were not named in your application form.

If any of your assessors informs us he or she is unable to give an assessment, another assessor from the same category will be approached.

Assessments will only be accepted in English.

**30. Number of assessors**

Applicants are expected to name a judicial and a practitioner assessor from each of their listed cases; and at least six client assessors from those cases. It is important to explain if you are unable to provide an assessor in any category in respect of any particular case.

The Panel recognises that in some fields of practice a case may be of considerable substance and thus merit listing even if there was no substantial court or arbitration hearing in the case. It is legitimate for such cases to be listed even though there will be no judicial assessor. The Panel also recognises that there will on occasion be no professional advocate in the case apart from the applicant; it is legitimate for those cases to be listed as well.

However, applicants should seek to avoid listing a large number of cases in which it is not possible to list an assessor in one category or another. The Panel needs to collect four judicial, three practitioner and two client assessments on every applicant and it is important that the Panel should where possible have a number of potential assessors to choose from, to avoid the Panel getting the impression that the applicant is seeking unduly to constrain the Panel. It is preferable to list some cases in which a judge has seen you in a substantial matter more than three years ago, rather than listing a large number of cases in which there is no judicial assessor.

Where for any reason the Panel is not able to obtain sufficient assessments the applicant is likely to be at a disadvantage.

**Naming of Assessors**

Assessors are not asked to be supporters of an applicant, but to give evidence as to how the applicant demonstrates the competencies. Assessments are a crucial component of the evidence to inform the Panel's decision.

There are no automatic consultations. Assessors will be selected from among the list of names provided by you on the basis of their personal experience of you and the cases you name.



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All assessments will be taken on the basis that they are confidential to the assessor, the Panel, and the Secretariat. Assessments are given in confidence and therefore no applicant will be entitled to see any assessment, or be informed of the names of those who provided assessments, whether the application is successful or not. The Selection Panel regards it as improper for applicants to ask assessors for sight of any assessment the assessor may provide on them.

### **Informing your Assessors**

You are required to list an assessor from each category from each listed case irrespective of whether the individual concerned is willing to provide an assessment. There is no obligation to tell any of your assessors that you have named them. However, where you are considering listing an individual as one of your nominated assessors in a particular category, you may wish to ensure that they feel able to provide an assessment. There is no need to be inhibited about this; judges are used to such contact from prospective applicants.

Applicants should not lobby for support. QCA will provide assessors with all the information that they need, extracted from the application form. Although there is no objection to providing potential assessors with a copy of a written argument as an aide-memoire, applicants should not provide further material.

The Selection Panel regards it as improper for applicants to seek to influence assessors' views, including by providing suggested material to use in an assessment. Assessors have been asked to inform the Selection Panel if they should receive any approaches of that sort.

However, the Panel recognise that, prior to applying, applicants may wish to seek advice on whether the applicant is ready to apply for silk, and that those best placed to provide such advice may well be potential assessors. There is no objection to such contact.

Applicants are asked not to chase assessors to check whether they have been asked for, or have provided, an assessment. QCA will carry out any necessary chasing of assessors. QCA has in recent years obtained well over 99% of the maximum possible number of assessments. Applicants should however notify QCA if they become aware after submitting their application that the contact details for an assessor have changed.

### **Assessors Selected by the Panel**

Other assessors (ie not nominated ones) will be chosen from among those listed on the application form. The Panel will be looking for assessors who can speak to your demonstration of the competencies in particular in the cases listed on the application form.

### **Other Considerations in relation to Assessors**

Applicants should not list as an assessor:

- (a) Any current or former family member or sexual partner.
- (b) A godparent.



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(c) The Attorney General or the Solicitor General for England and Wales, as they have indicated that they do not consider it appropriate for them to give assessments.

(d) Any person whom the applicant knows to be unable to give an assessment for any reason, including ill health.

Unless there is no sensible alternative, applicants should not list as an assessor a member of the Panel who will deal with the 2019 competition. However, if such an individual has experience of the applicant's work which cannot be replicated by a different assessor, it is acceptable to list them. A Panel member who provides an assessment of an applicant in the competition will play no part in the Panel's discussions or decision making about the applicant concerned.

It is also preferable not to list persons with whom an applicant has a close personal relationship. However, if an applicant considers that because of their role in relation to the listed cases it is necessary to do so, the applicant should state the nature of the relationship.

Applicants should indicate whether a prospective assessor is or has had a close professional relationship with the applicant the applicant.

Examples of relationships that must be disclosed as "own chambers" assessors on the application form include:

- a) Someone who has been in the same chambers or firm at the same time as the applicant.
  - b) A partner, employee or associate of the applicant's firm, or any organisation that employs the applicant.
  - c) An arbitrator appointed by the applicant's firm (whether in the case concerned or not, and whether or not the applicant was involved in the appointment).
  - d) A former pupil master, pupil supervisor or training principal of the applicant.
31. We normally contact assessors by email, but sometimes by post or DX. We therefore need current direct email addresses. Current direct telephone numbers are also helpful.

If you are unable to obtain a direct email for the Judge please add [dummy@qcappointments.org](mailto:dummy@qcappointments.org) and we will make every effort to obtain the email but please ensure you tell us which court the Judge is sitting in the description of case if possible.

Assessors will be asked to provide a confidential written assessment including examples in relation to each of the competencies. A copy of an assessment form and the guidance to assessors will be available on the QCA website in due course. Assessments will be accepted only in response to a request from us; unsolicited references and testimonials will not be accepted.



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**32. Nominated Assessors**

Applicants are asked to nominate two assessors in each category of assessor (judicial, practitioner and client). Their first choice of nominated assessor in each category will be invited to provide an assessment. If it is not possible to obtain an assessment from the first nominated assessor, the second choice will be approached instead. If neither the first nor your second nominated assessor is able to provide an assessment, we will not invite applicants to nominate a third, but we will nevertheless seek to ensure that we collect sufficient assessments from among the assessors named in that category. In practice, we almost always obtain assessments from one of the two nominated assessors in each category for all applicants.

Please note that we will **not** approach a nominated assessor who is not eligible (for example, a spouse, or someone who does not have first-hand experience of an applicant in a relevant case, or someone is not a valid assessor in the category in which they were listed).

**33. Information for Assessor**

The pages in Section I contain the information that will be sent to the assessor. The Panel will use it to understand the applicant's role in relation to the assessor and the case, and the assessor will use it to understand the context in which they have been named and to help recall his or her experiences of the applicant's work. This is the only information that the assessor will see. Applicants should give the dates on which their involvement in each case began and ended. Approximate dates (month and year) are sufficient.

The description should:

- Explain briefly the nature of the case, including any especially difficult or challenging aspects, and any special considerations, for example if the law applied by the court or tribunal in the case was not England and Wales law;
- Indicate to what extent the applicant was led, was alone (ie sole advocate) or was the case leader;
- Give the role of the assessor (unless obvious eg trial judge);
- Set out the nature of the applicant's role (including the extent of your written and oral advocacy, or contribution to documentation);
- Say how long the applicant was observed in this role;
- Say how frequently this assessor sees the applicant "in action";
- Mention any relationship you have with this assessor.

The explanation of your role should clearly show what **you** did in the case in relation to the assessor. For example in the case of a judge, whether he or she would have read your written submissions or heard oral argument from you, or observed your cross-examination, and over what period.

To be fair to all applicants, each text box provided has a capped character limit which cannot be exceeded. **The Panel will not consider information continued on a separate sheet or elsewhere in the form.**



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The assessors' names and judicial office (if any) for judicial and practitioner assessors, and the firm or organisation for client assessors, on the *Information for Assessor* pages in Section I will be completed automatically for you, based on information you have entered on the *Contact Details* page for that assessor. You will not be able to overwrite or alter the information in these fields, except by amending the original entry on the previous page.

### 34. Judicial Assessors

You are asked to list at least one judicial assessor from each of your listed cases.

All persons acting in a judicial capacity are eligible to give judicial assessments. However, the award of Queen's Counsel is made for excellence in advocacy in the higher courts in England and Wales. It follows that the assessors to whom the Panel can attach most weight are those with best experience of advocacy in cases of substance or complexity in those courts. Accordingly, although eligibility to provide judicial assessments is not confined to the judges of the higher courts in England and Wales, the Panel may well give more weight to assessments provided by judges from those courts than to those provided by judges who have less experience of what is expected of advocates in the higher courts in England and Wales. Where applicants are considering (or need to) list judges from outside England and Wales, they should give careful thought to the extent to which the prospective assessor is likely to be able to give evidence of excellence in relation to the competencies required for recommendation for appointment as QC in England and Wales.

Applicants need to name at least one judicial assessor from each listed case, unless no judge was involved. Where there is more than one possible judge who could be listed it is desirable to ensure that the judge listed has enough exposure to the applicant to provide a worthwhile assessment.

Although all things being equal, partly because of their particular familiarity with what is expected of QCs, assessments from High Court Judges or more senior judges can be particularly helpful, it is not sensible to list a senior judge who has only a fleeting acquaintance with the applicant's work in preference to a more junior judge who has had much greater exposure to it. Each year, a significant number of applicants have been appointed without any assessments on them from High Court or more senior judges – last year there were 22.

Where possible, applicants are expected to name amongst their judicial assessors a leading judge in their specialism or local area before whom they have appeared.

The Panel is looking for assessments which can reflect your demonstration of the competencies in a number of cases and circumstances. You should not list more than one judicial assessor from amongst those hearing the same case (e.g. in the Supreme Court or the Court of Appeal) unless the second assessor has other, unique, experience of you.

Keep in mind that senior judges in particular are unlikely to recall brief hearings, especially if some years ago.



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Judicial assessments can only be provided by those exercising a judicial function. Accordingly, assessments from a mediator are not acceptable as judicial assessments, but the Panel will accept an assessment from a mediator as a practitioner assessor.

35. Applicants do not need to give the addresses of serving High Court and more senior judges in England and Wales, who will be written to at their normal court. You do not need to give the addresses of retired full time judges of England and Wales. We will contact them via the Ministry of Justice. Similarly, we will contact planning inspectors directly through the Planning Inspectorate in England or in Wales.

For part-time judicial office holders, please if possible give their chambers or other professional address in the contact details.

### 36. Practitioner Assessors

Practitioner assessors are generally lawyers acting as fellow advocates in the case in question. Instructing solicitors are client assessors rather than practitioner assessors, even if they hold higher courts rights of audience, unless they are also an advocate in the case concerned. However, mediators, or legal assessors to tribunals, may also be given as practitioner assessors.

Applicants are asked to list as assessors at least one practitioner from each of their listed cases. In deciding which practitioner(s) to list, it is desirable to consider the potential assessors ability to provide persuasive evidence on the competencies, especially oral advocacy. In a case in which an applicant conducted most of the oral advocacy, it will generally be desirable to list an opposing advocate, especially if the opponent was a QC. If the applicant did not conduct most of the oral advocacy, and was led, it will generally be desirable to list the leader. Practitioners who have since been appointed to full-time judicial office should still be listed as practitioner, not judicial, assessors where that is the capacity in which they have had experience of the applicant's work.

The Panel has indicated that, subject to the nature of the practice, it will normally wish to obtain practitioner assessments from QCs, or failing that from other practitioners who are at least as senior as the applicant. As noted above, practitioner assessments may include assessments from a legal assessor in a tribunal or from a mediator.

In general terms, the broader the range of assessors the better the quality of evidence available to the Panel. It is helpful to the Panel for assessors to be drawn from a number of chambers. In deciding how much weight to give to a practitioner assessment, the Panel may have regard, amongst other things, to the fact that an assessor is currently in the same chambers or firm as the applicant or has recently been in the same chambers or firm, or is an arbitrator who has in the past been nominated by the applicant's firm. Although the Panel recognises that senior members of an applicant's firm or chambers may be particularly well placed to provide an assessment of an applicant, applicants are asked where possible to avoid naming a majority of assessors with this sort of connection, although the Panel understands that in some specialised practice areas this may be unavoidable.



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**37. Client Assessors**

You are asked to list at least six professional clients, clients or client proxies from your listed cases. In many cases the 'client' will be the instructing solicitor. However, it may include a senior legal officer in a company or other body. A 'client proxy' is an experienced professional person who is in a position of authority in connection with a client and who is able to comment with authority on the applicant's abilities. Examples might include guardians *ad litem*, police officers, medical professionals, certain expert witnesses, and professionals from social services departments.

Each individual listed will count as a separate professional client, client or client proxy, even if the individuals are from the same firm, institution or organisation. However, it is undesirable for all your client assessors to come from only one or two different firms or organisations unless the nature of your practice makes that unavoidable.

The Director of Public Prosecutions has advised that individual Crown Prosecution Service (CPS) lawyers (not paralegal officers) may be listed so that they may be asked to be assessors. However, the assessment will be given by the Chief Crown Prosecutor (or equivalent) to whom the assessor reports, in consultation with his or her colleagues. You should if possible not name more than one CPS lawyer from any one CPS Area.

It has been agreed with the Treasury Solicitor's Department that to ensure consistency in the assessments provided by Government lawyers, assessments will be considered by the relevant Head of Division (or equivalent) to whom the assessor reports. The assessment may be prepared by the named Government lawyer, in consultation with his or her colleagues, and, after consideration by the Head of Division, signed by that Government lawyer. In some cases the assessment may actually be given by the Head of Division, in consultation with his or her colleagues. You should therefore try to avoid naming more than one Government lawyer in the same team or Division as that could result in a single potential assessment.

Employed advocates are expected to include among their client assessors at least one partner or representative from their employing firm, company or institution. Where employed advocates are instructed by different individuals in their employer's business, each may be listed as a client assessor. If an employed advocate is not able to list an assessor from their employer's business, an explanation should be provided. The Selection Panel understands that many employed lawyers will only be able to list as client assessors individuals who are employed by the same employer as the applicant.

Client assessors, like other assessors, need to be in a good position to give an informed view of your demonstration of some or all of the competencies required. Depending on the nature of your practice, it is rarely likely that a lay client will have the requisite knowledge or standing to provide an assessment of assistance to your application. As with all assessments, it is for the Panel to determine the weight to be given to each assessor's evidence. Applicants can approach the Secretariat if they are unsure about naming potential client assessors.



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Client assessors may be based in any locality and be of any national background, so long as the assessment is given in English.

- 38. At Section J**, all applicants are invited to provide monitoring information. Promoting equality of opportunity and diversity in the legal professions is important to the Panel; Section J will be retained in the office and will not be provided to the Panel. The information you provide will only be used for statistical or research purposes, on an anonymised basis, and for evaluating the process as a whole. It will not be used when considering your suitability for the award of Queen's Counsel.

**39. Disability**

Any applicant participating in the application process who has particular needs, including those arising from a disability, should contact the Secretariat, and we will endeavour to make arrangements to meet your needs. The application form can be provided in Braille on request.

All applicants who are invited to interview (irrespective of whether they have indicated that they have a disability) will be asked to let us know of any particular arrangements which they wish us to make to enable them to participate fully in the interview (such as seating arrangements, access etc.). However, you are under no obligation to disclose details of a disability at any stage in the selection process.

- 40.** By submitting the form you are declaring that the cases you have named in your case list are ones of substance, complexity or particular difficulty or sensitivity.
- 41.** Please state whether there is anything in your personal or professional background which, if brought into the public domain, could affect your suitability for appointment or bring the legal profession or Queen's Counsel into disrepute.

You should be aware that if you fail to declare something which later comes to light, and could have had a bearing on its decision, the Panel may need to consider whether to recommend to the Lord Chancellor the removal of silk.

- 42.** In accordance with the Process, the Secretariat will send lists of all applicants to senior members of the judiciary who are asked to let QCA know if they are aware of any applicant in respect of whom a judge may have a concern from the perspective of the integrity competency. The lists will also be sent to the relevant professional body with responsibility for professional conduct. For this reason we seek your authority to check your disciplinary record with your professional regulator or other body.
- 43.** The Panel expects that the information you provide in your submitted application will be complete, true and factually accurate. It is your responsibility to ensure that the information is correct and complete. You should check carefully that all parts of the form are fully complete and accurate before you submit your application. **You will not be allowed to add to or amend your application form once the closing date has passed.** However, if you subsequently become aware of any factual inaccuracies or changes to contact details please notify the Secretariat as soon as possible and provide the revised details.



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In all cases you must ensure you have added your name to the signature box on page 52 of the application form. This is your 'electronic signature' and acts as your declaration and authority.

Your application must be accompanied by the fee. The fee is £2,160 (£1,800 plus VAT) payable in full by the application deadline, except for those entitled to claim the concessionary fee for low incomes, which is £1,080 (£900 plus VAT). The preferred option for payment is to be made online after you have uploaded your application form to the submission page. Please follow the steps provided to pay by debit card. Payment by credit card is not accepted.

The concessionary fee is available to those with gross fees, drawings or earnings of £60,000 or less in the most recent year. For barristers in private practice, that is the period relevant to the 2019 practising fee renewal; for other applicants it is the 2017-18 tax year. QCA reserves the right to seek verification of entitlement to a concessionary fee. Concessionary fees cannot be paid online; only by cheque or BACS transfer. If you are uncertain about whether you are entitled to claim the concessionary fee, please contact the Secretariat as soon as possible.

You may also pay by electronic payment direct to our account

Bank: Royal Bank of Scotland, Child & Co Branch,  
1 Fleet Street, London EC4Y 1BD  
Sort Code: 15-80-00  
Account: Queen's Counsel Appointments  
Account No: 10578135

You must quote your surname and ID number as the reference for your payment. You may wish to ask your bank for confirmation of payment.

Alternatively, applicants may pay by means of a cheque made payable to *Queen's Counsel Appointments Ltd*. The cheque must be in pounds sterling and drawn on a UK bank or Building Society.

Any application which is made without the payment of the fee will be treated as invalid.

You should receive by email a VAT receipt for your fee once payment is confirmed online. If payment is by cheque or electronic transfer it will take around 21 working days from receipt of both your application and the payment.

If your application is successful, a further appointment fee of £3,000 plus VAT will become payable, in addition to the cost of Letters Patent.

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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.

### 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

*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

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

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, 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.

**QC Secretariat**

## **APPENDIX B – GUIDANCE ON HANDLING ISSUES OF CHARACTER AND CONDUCT**

### **Introduction**

- A1 This Appendix gives guidance as to how the matters referred to in Section C of the application form (*Character*) will be handled by the Panel. You should read this before completing that section. It will help you to decide whether an issue is material to your application and needs to be disclosed.
- A2 If, having read this Appendix, you are still in doubt as to whether to disclose a matter, you should do so, so that the Panel can make the appropriate decision. You should be aware that if you fail to declare something which later comes to light, and could have had a bearing on its decision, the Panel may need to consider whether to recommend the removal of silk.
- A3 The Panel expects to be notified immediately of any change of circumstances in relation to matters of character in the course of the competition. This includes:
- Where any complaint against you is dismissed;
  - Where a finding is made against you;
  - Where a new issue arises (eg a complaint);
  - Where other action is in prospect (such as criminal proceedings, a wasted costs order, bankruptcy or voluntary arrangement, or any kind of investigation by any professional, regulatory or complaints handling authority).

### **Handling of issues of character**

- A4 The Panel has said that it will consider an issue of character only where it could affect the decision whether or not to recommend an applicant for appointment. In other words, the Panel will generally assess your application based on the self-assessment, summary description of practice, assessments and (where applicable) interview alone, without regard to any matter disclosed by you in Section C of the application form or otherwise, or in response to the professional conduct check. Only if it appears that a character issue is of sufficient seriousness to affect any eventual decision as to recommendation for appointment will the Panel be made aware of an issue of character in relation to a named applicant. If you are invited for interview, the interviewers will not generally be aware of a character issue and you should therefore not mention such a matter during the interview, unless raised by the interviewers.

### **Professional conduct and integrity checks**

- A5 In accordance with the Process, the Secretariat will send lists of all applicants to senior members of the judiciary and to the relevant professional body with responsibility for professional conduct. For this reason we seek your authority to check your disciplinary record with your professional regulator or other body. We will also seek to make enquiries of any professional bodies in other jurisdictions where you may have practised.
- A6 If any of the senior judges who has received the list has reason to believe that an issue concerning integrity as it relates to the Competency Framework is known to another judge, the senior judge may invite the Panel to seek comments from the judge concerned. If comments are sought from the judge concerned, the comments will be directed at the integrity element of the Competency Framework. Concerns will have



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to be fully particularised. If any concerns about integrity are identified in this way they will be put to you, so that you have an opportunity to provide an explanation to the Panel.

- A7 Where checks with the professional bodies reveal that an applicant is or has been subject to a disciplinary finding or pending complaint, the Secretariat will contact the applicant for a full explanation, unless such explanation has already been given in the application form or volunteered by the applicant. If any matters of concern are identified in this way they will be put to you in writing by the Secretariat on behalf of the Panel, so that you have an opportunity to provide an explanation. If a finding or complaint is reported which you have not disclosed in your application form, the Secretariat will write to you to give you an opportunity to address in writing (a) the question of non-disclosure and (b) the materiality of the finding or complaint to your application.

### **Consideration by the sub Panel**

- A8 If a character issue is disclosed then the relevant part of the application form and/or correspondence (with any details identifying the applicant removed) will be placed before a sub Panel made up of members of the Panel. The sub Panel, reporting to the full Panel, will form a view as to whether the issue is serious enough potentially to affect any eventual decision to recommend an applicant who otherwise appears suitable for appointment. If the sub Panel requires further information or clarification from the applicant, it will ask the Secretariat to write to him or her. The sub Panel will reach its conclusions independently of the Panel's consideration of the other evidence relating to each applicant.
- A9 Only issues which the sub Panel considers to be of such seriousness as potentially to affect any eventual recommendation will be brought to the full Panel's attention in relation to an applicant. This will normally be done prior to the Panel's decisions as to whether each applicant has demonstrated the competencies sufficiently to be invited to interview. Where the Panel concludes that an issue on an (anonymised) applicant is not sufficiently serious to impact on any eventual decision on the application, the Panel will not be made aware of it when considering whether the applicant concerned should be interviewed or recommended for appointment.

### **Considerations in determining issues of character**

- A10 The following considerations will be borne in mind.
- A11 Applications are assessed against the Competency Framework. All advocates, whether QCs or not, are expected to maintain the high standards of the legal profession.
- A12 Character is considered as a whole. If more than one issue is presented by an applicant, then the Panel will consider:
- a. Whether any one issue by itself is or may be of concern; or if not



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- b. Whether all issues taken together are or may be of concern, disregarding any that may not be taken into account (see paragraph A16 below).
- A13 In other words, one relatively minor instance may not be considered serious enough to be a bar to recommendation, but the sub Panel will consider whether there is evidence of a pattern of behaviour that the full Panel needs to take into account.
- A14 In the case of pending criminal proceedings, complaints and professional negligence claims, or other pending matters, the sub Panel will consider whether the complaint or claim, if substantiated, would be of sufficient seriousness to provide grounds for the Panel to wish to defer any recommendation.
- A15 Unless the applicant has provided a satisfactory explanation in correspondence, non-disclosure of an issue by an applicant may be treated as being of sufficient seriousness to require consideration by the full Panel.
- A16 The following need not be disclosed:
- a. Criminal convictions that are 'spent' under the Rehabilitation of Offenders Act 1974. The Panel takes the view that under the Rehabilitation of Offenders Act 1974 a candidate need not disclose a spent conviction and the Panel will not take a spent conviction into account when considering an applicant,
  - b. Complaints, professional negligence claims and other proceedings against an applicant that have been dismissed.
- A17 Subject to other factors described in this Appendix, character issues will be assessed by the Panel in the light of the following criteria:
- a. Seriousness,
  - b. Time elapsed since the incident occurred,
  - c. Experience at the time of the incident, in the sense that 'youthful indiscretions' are more likely to be disregarded. In particular, matters predating the applicant's call or admission to the profession will normally be ignored (although they should still be disclosed, except as specified above),
  - d. Relevance of the incident to the Competency Framework,
  - e. Any other feature that might cause concern, e.g. as potentially bringing the position of QC into disrepute, having an adverse impact on the client, or failure to disclose a finding or pending matter of professional disciplinary fault.

**Criminal convictions**

- A18 Particular considerations apply in the following cases:



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- a. Minor motoring offences where the applicant was not obliged to appear in court should be disregarded. However, any motoring offence resulting in disqualification, including under totting up, should be disclosed.
- b. Any conviction for an offence of dishonesty or resulting in a term of imprisonment will be of serious concern and is likely to be a bar to appointment.
- c. Any other unspent conviction or bind over will be considered on its individual merits.

### **Findings of Professional Negligence**

- A19 Where a claim against you has been dismissed, it should not be disclosed. Where a claim against you has been settled, you should disclose the terms of the settlement, and indicate clearly whether and to what extent you have accepted liability.
- A20 Findings of negligence and settlements where the applicant admits to being or appears to have been at fault will be assessed taking into account the degree of loss and the importance of the matter to the client along with any other relevant factors.

### **Professional disciplinary fault**

- A21 Findings of professional disciplinary fault will be relevant to Competency E – Integrity, as showing prima facie a failure to honour professional codes. They will be treated on a case-by-case basis having regard to factors such as the penalty imposed. Generally, a penalty such as a suspension from practice is likely to be treated as indicating that the profession regarded the offence as serious, while admonishment or a reprimand, or an order to compensate the client, may suggest that it was less serious in professional conduct terms. However, that is not to be regarded as an absolute rule and each case is considered on its merits.

### **A wasted costs order**

- A22 Wasted costs orders will be considered with regard to the reason given for the order being made, the amount involved and the length of time since the order was made.

### **A complaint to the Legal Ombudsman**

- A23 A complaint to the Legal Ombudsman is unlikely to be regarded as significant in itself. However, a series of such complaints may well be significant. A direction from the Legal Ombudsman which indicated gross neglect of the interests of a client would also be significant.

### **An intervention by the Solicitors Regulation Authority**

- A24 An intervention into a solicitor's practice is likely to be regarded particularly seriously.

### **A bankruptcy order, debt relief order, individual or partnership voluntary arrangement or a director's disqualification order**



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- A25 A current or recent (ie within five years of discharge) Individual Voluntary Arrangement (IVA) or bankruptcy or other order will be of concern. An undischarged IVA or bankruptcy order may well preclude appointment. An IVA or order which has been discharged is not likely to preclude appointment, unless there is an indication of reckless conduct leading to the IVA or bankruptcy. However, such cases will be considered with regard to all the circumstances.

**Any other form of order or proceeding that may be material to the Panel in considering your application to be appointed Queen's Counsel**

- A26 You should disclose any matter not covered by the above categories but which a reasonable person would regard as material to your application, having regard to the general criteria mentioned above. An example of such a matter would be a foreign criminal conviction or an order of a court or tribunal outside of the United Kingdom.

**Further assistance**

- A27 If you have any doubts about the application of this guidance to your own circumstances you may discuss the matter in confidence with the Chief Executive.

