



**REPORT OF THE QUEEN'S COUNSEL SELECTION PANEL
TO THE LORD CHANCELLOR
ON THE PROCESS FOR THE SELECTION AND APPOINTMENT
OF QUEEN'S COUNSEL 2017**

1. Process and Competency Framework

The current system for the appointment of QCs, developed by the Bar Council and the Law Society with support from the then Department for Constitutional Affairs, was first used for the 2005-6 competition. Following that competition, the process was revised in the light of experience. The revised Process (including the competency framework) was agreed by the professional bodies, and approved by the then Lord Chancellor, in 2006. It has been used ever since, subject only to minor modifications.

2. Selection Panel

There were two changes to the composition of the Selection Panel for the 2017 competition: Helen Pitcher OBE stepped down as Chairman of the Panel and Sir Alex Allan was appointed. Dr Maggie Semple was appointed as a new lay member.

The Panel which oversaw the 2017 competition and considered the applications thus comprised:

- Sir Alex Allan (Chair - appointed 2017, appointed lay member 2013)
- Wanda Goldwag (lay member - appointed 2015)
- Tony King (solicitor member - appointed 2014)
- Martin Mann QC (barrister member - appointed 2013)
- Edward Nally (solicitor member - appointed 2016)
- Quinton Quayle (lay member - appointed 2013)
- Dame Janet Smith (judicial member - appointed 2016)
- Dr Maggie Semple OBE (lay member - appointed 2017)
- Shaun Smith QC (barrister member - appointed 2014)
- Ranjit Sondhi CBE (lay member - appointed 2014)

The Panel has been supported by a Secretariat comprising three full-time and one part-time member of staff, reducing from September to two full-time and two part-time members of staff, with additional support at particularly busy times.

3. Application and Appointment Fee

The costs of considering applications for appointment as Queen's Counsel are met solely by applicants' fees. The level of the fees is set by the Directors of QC Appointments Ltd, acting on behalf of the Bar Council and the Law Society.

The fees remained unchanged from last year. The application fee was £1,800, and for applicants who are appointed, a further appointment fee of £3,000 will become payable, in addition to the cost of Letters Patent. VAT is payable on the application and appointment fees.

However, this year, facility was introduced on a pilot basis for reduced fees (payable at half the standard amounts) for applicants with low earnings, defined as below £60,000 in fees for those at the self-employed Bar. Two applicants in the 2017 competition took advantage of that reduced fee.

4. Receipt of Applications

Applications were invited from 16 February 2017 with a deadline of 5 pm on 30 March 2017.

In all, 272 applications were received, an increase of 18 on the previous year. In addition, one applicant from the 2016-17 competition was reconsidered following a decision by the QC Complaints Committee.

5. Description of Practice and List of Cases

The application form invited applicants to give a summary description of practice, which was an opportunity to give the Panel a direct understanding of the nature of their practice, draw attention to the most important cases, and to explain any problems with naming assessors or other matters.

Applicants were asked for a schematic list of the cases mentioned in their summary description of practice, showing their role in the case and which of their assessors had experience of them in that case. This facilitated the selection of assessors and enabled the Panel to make more effective use of the evidence from assessments.

Applicants were asked to list 12 cases of substance, complexity, or particular difficulty or sensitivity in which they had appeared in the last three years. The guidance made it clear that where there was a good reason, such as a career break, it would be acceptable to list cases from before that.

6. Assessors

Applicants were required to provide the names of assessors in three categories: judicial, practitioner, and client. They were asked to provide the names of at least eight (and up to 12) judicial assessors, six practitioner assessors, and at least four (and up to six) client assessors.

In the 2017 competition, 89% of applicants named at least the minimum of eight, six and four assessors sought. A total of 26 applicants named fewer than eight judicial assessors, of whom seven named six or fewer judicial assessors, compared with 17 applicants naming six or fewer in 2016-17. In five cases where the application form failed to explain satisfactorily the reasons for a significant shortage of judicial assessors, the Secretariat wrote to the applicant on behalf of the Selection Panel, seeking a further explanation.

7. Validity of Assessors

Applicants were told that they should not list as an assessor:

- a spouse or partner;
- the Attorney General or Solicitor General for England and Wales.

Following modification of the former rather complex rules in 2014, anybody acting in a judicial capacity is now eligible to provide a judicial assessment. However, the Guidance for Applicants makes clear that the weight the Selection Panel can give to individual judicial assessments is likely to depend in large part on the degree to which the assessor appears to the Panel to be familiar with, and able to assess applicants against, the standards expected of silks in the higher courts of England and Wales.

8. Nominated Assessors

The Process requires the Panel to seek assessments from one assessor in each of the three categories (judicial, practitioner and client) who has been specifically “nominated” by the applicant. Applicants list a first and second nominated assessor in each category in case the first nominated assessor is unable to provide an assessment for any reason.

In the course of assessment collection, the Secretariat checked to see where assessments from the first nominated assessor were lacking with a view to seeking an assessment from the second nominated assessor. This year, assessments were received from a nominated assessor in each of the judicial, practitioner and client categories in respect of all applicants.

9. Assessor Selection

Apart from the nominated assessors, the original assessor selections were carried out by senior Secretariat staff, overseen by the Chief Executive, on the basis of criteria which had been approved by the Panel.

In advance of the competition, the Panel decided that ideally no assessor should be asked for more than six assessments. However, there was a small number, mostly of the senior judiciary, who were frequently mentioned as assessors. The overriding consideration was to select assessors who were well placed to provide high quality evidence and who, taken together, could effectively comment across the breadth of the applicant’s practice and on all the competencies. In the event, three assessors were asked for, and provided, seven assessments.

The Panel also agreed that where an assessment provided no usable information, the Secretariat would select an alternative assessor from amongst those listed by the applicant. This led to 46 of the assessments originally provided being discarded in favour of more informative assessments from a different assessor in the same category.

10. Broader Views

The Panel has recognised that assessors may have other colleagues, notably specialist or local judges, who have further direct personal experience of the applicant which could be helpful to the Panel in making a fully informed decision. The Panel has wished to benefit from that broader experience, but has been concerned that any use of such information should be as fully transparent and as evidence based as the rest of the process. Accordingly, it was made clear that individual assessors were free to consult other colleagues with further direct experience of the applicant, and to report their views as part of the assessment in a separate section on the form.

In the past, there have been a few instances in which an assessor commented in the course of an assessment on how the judiciary in a particular field ranked the applicant in comparison with other applicants. Following consultation with the Chief Executives of the professional bodies, as owners of

the process, the Guidance to Assessors was amended in 2016 to make it clear that comparative material of that sort would need to be redacted from assessments before they were passed to Panel members for grading. Assessments are also normally redacted where the assessor refers to previous applications, or where the assessor compares an applicant directly with others. There were only 10 instances where there was some redaction in 2017.

11. Seeking Assessments

All assessors were asked to provide evidence of each of the competencies where they could, and to score the applicant overall with a single rating. Assessors were not asked to give a rating in relation to individual competencies. It was emphasised that assessors need not comment on those competencies on which they had no evidence to offer.

The Secretariat initially sent 1,744 letters seeking a total of 2,447 assessments, i.e. around 1.4 assessments per assessor on average (the same as last year). In addition, as a result of assessors failing to respond, declining to provide an assessment, or providing an assessment with no usable information, the Secretariat sent letters seeking in total a further 178 assessments. A total of 2,625 assessments were thus requested in this competition.

The Secretariat pursued outstanding assessments from late May 2017 through to early August 2017.

12. Assessments Received

The first completed assessment was received on 12 April 2017, and the overwhelming majority by the third week of June. A total of 108 assessors did not provide assessments sought: 65 assessors said they were unable to provide assessments on at least one applicant; 43 were reported to be unavailable or failed to respond to the request in relation to one or more assessments.

A total of 2,447 assessments were received and considered by Panel members. This was the maximum possible number of assessments, because one applicant named only one judicial assessor.

13. Integrity and Professional Checks

As the Process requires, a full list of applicants was sent to the senior judges, namely the Lord Chief Justice, the Master of the Rolls, the President of the Queen's Bench Division, the President of the Family Division, the Chancellor of the High Court, and the Senior Presiding Judge. The lists were also sent to senior judges in charge of the Upper Chamber Tribunals. The judges were invited to let the Panel know where they had any reason to believe that an issue concerning integrity as it related to the competency framework was known to them or another judge, in order to enable the Panel to seek comments from that judge. No substantive responses were received.

Lists of barrister and solicitor applicants were sent respectively to the Bar Standards Board (BSB) and Solicitors Regulation Authority (SRA) to ensure that any findings or uncompleted investigations relating to misconduct were identified. Similar checks were made with the Office of Legal Complaints (OLC).

The Character Issues Sub Panel of the Panel, chaired by Wanda Goldwag, considered the information provided by the regulatory bodies, along with information disclosed by applicants in their application forms, in an anonymised form.

In cases where professional checks revealed that an applicant was subject to a disciplinary finding, the Secretariat sought a full explanation from the applicant, except where such an explanation had already been given in the application form.

14. Recusal of Panel Members

Panel members were invited to notify the Secretariat of any applicants whom they could not properly consider by virtue of some personal connection. In addition, as in previous competitions, applicants were provided with an opportunity to name any Panel members by whom they considered it would have been inappropriate for their case to be considered.

Panel members who were recused did not provisionally grade or interview the applicant. Furthermore, Panel members who were recused took no part in discussing that application at moderation meetings.

15. Declarations of Interest

Panel members were also asked to declare any current or recent interest which they had which might be material to the functions of the Panel, or anything else that might be perceived by others as potentially compromising their objectivity in carrying out these functions. The Register of Interests is published on the QCA website.

16. Panel Pair Assignment

The Process provides that for the purpose of provisionally grading and interviewing the applicants, the Panel should divide up into pairs comprising a legally qualified member and a lay member, and this was how all the pairs were constituted for this competition.

17. Benchmarking

Three benchmark cases were considered in detail (each Panel member having independently completed their own score sheet) at a Panel meeting on 13 June 2017 and provisional decisions made as to whether to invite the applicants to interview. This helped to secure consistency of marking standards as between individual Panel members. The three benchmark applications were considered again, with all the other applications, at pre-interview moderation.

18. Information Considered at Grading

Under the provisional grading process, the members of each Panel pair considered, in relation to their cases:

- a summary 'rating sheet'. This contained the names of all assessors from whom an assessment had been received, with the ratings given by the assessor, whether they were nominated, whether they had been in the same chambers or firm as the applicant. In addition, the rating sheet gave information about the applicant's specialisms and geographical area of practice;
- the self-assessment, summary description of practice and case list from the application form;
- 'additional information' provided by the applicant with their application, except where it was not appropriate to do so, for example where the applicant included there material which should have been elsewhere on the form;
- copies of assessments received;
- the extract from the application form describing the applicant's exposure to the assessor.

Panel members had previously been supplied with the applicants' professional addresses to assist recusal decisions, but this information was not included in grading or interview packs. Panel members were not given date of call or admission. Nor were they provided with other information extraneous to the practice and the demonstration of the competencies (such as age, ethnicity, or disability, or whether the applicant had applied previously), although sometimes this was disclosed in the assessments or self-assessment or at interview.

Panel members were provided with a summary of the number of assessors mentioned on the application form in each of the judicial, practitioner and client categories. This enabled them to assess the scope for obtaining assessments in each category, and was where appropriate taken into account in forming a view of the application.

Applicants were told that where any concern was expressed by an assessor amounting to an allegation of professional misconduct, the Panel would not take it into account unless, with the consent of the assessor (if necessary), it had been put to the applicant, who would be given the opportunity to provide the Panel with an explanation. There were no such instances this year.

19. Grading of Applications

After the benchmarking meeting, Panel members began to grade each applicant. One Panel member took the lead in each case - that is, considering the applicant in depth, and preparing the first draft of the grading pair's report to the full Panel – whilst the other considered the case separately, and indicated whether they agreed with the scores and comments provided by the lead member. Any areas of disagreement were then the subject of discussion and in many cases agreement between them. Where a case was not agreed, it was graded P (meaning the pair was not able to make a firm recommendation to the full Panel). Legally qualified and lay Panel members played an equal part in the grading process, and acted equally as lead or support members of the pair.

20. Diversity

The Competency Framework identifies diversity as a separate competency in which excellence is to be demonstrated. The Panel recognises that different applicants would have had different experiences in relation to this competency. The wording of the competency includes both awareness and action - being aware is not enough: there must be evidence of support for the principle and practice of diversity, through personal action. In the Panel's view, this is potentially achievable by any applicant, whatever the nature of their practice. In considering diversity, the Panel looked for examples from the applicant's practice which were excellent in the light of their circumstances.

In practical terms, the Panel also recognised that it might be difficult to gain sufficient evidence from the assessments in respect of Competency D (Diversity) in advance of the interview. Accordingly, the Panel graded applicants "0" (indicating insufficient evidence to reach a decision) for diversity at the grading stage unless there was strong evidence in either direction, and a score of "0" at that stage did not exclude an applicant from an interview if an interview was merited on the strength of the other competencies.

The Panel's approach to each of the competencies is set out more fully in a separate note.

21. Rating Scales

Assessors had been invited to rate the applicant's overall demonstration of the competencies as: Excellent, Very Good, Good, Not Satisfactory, or Poor.

Panel members used the seven point scoring system developed in 2008 (and set out in Annex B) to assess each competency. The scores given in each competency in turn led to an overall conclusion. There were two exceptions to this general approach; namely Substance, and Competency E (Integrity). The Panel is looking for the demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity. In the grading of applicants and at moderation, the Panel noted substance as demonstrated, not demonstrated, or unclear; but did not score it as if it were a competency. The view of the substance of cases might, however, impact on the strength of the evidence available from that case.

The Integrity competency was regarded as met to the necessary standard provided that there was no credible negative evidence. The Panel noted Integrity as satisfied, not satisfied, or unclear; but did not give it a numerical score.

As before, in considering Competency B (Written and oral advocacy), the Panel looked separately at the written (B1) and oral (B2) aspects of advocacy in deciding their view of the competency overall. However, the overall score was not reached through aggregating or averaging the B1 and B2 scores, but reflected the Panel members' judgement in relation to the relative significance of written and oral advocacy in the applicant's practice.

22. Sufficient Evidence to Make a Decision

As part of the consideration of applications, the Panel had regard to whether the evidence (at this stage from the self-assessment, summary description of practice and the assessments) was adequate to make a decision on whether the applicant merited an interview, and how far any deficiencies in evidence could be made up at interview. In recent years there have been a few cases where there is insufficient evidence for the Panel to form a conclusion as to the demonstration of the competencies, and the application has had to be treated as unsuccessful at this point. However, that did not apply to any applicants this year.

23. Pre-interview Moderation and Filter

The reports prepared on each applicant by the grading pair were all considered by the full Panel at the pre-interview moderation meeting. It was thus for the full Panel, not for the grading pairs, to decide whether or not individual applicants were interviewed.

The Panel's approach is essentially that applicants should be interviewed unless it is clear, having considered the assessments from the assessors together with the applicant's own self-assessment, that they have no reasonable prospects of success. The Panel considers that it is possible for applicants' scores to improve in each of the competencies at interview. Accordingly, applicants are invited to interview unless their score for one or more competencies at pre-interview moderation is at least two lower than the minimum level required to be recommended for appointment.

This year, 187 applicants were invited to interview, and 85 were not. That means that 31% of applicants were filtered out at this stage, compared with 25% in 2016, 28% in 2015, and 34% in 2014.

The Panel's decisions about whether or not applicants should be interviewed were notified to applicants on 7 September.

24. Applicant Interview – Scheduling

Applicants were asked on 16 June 2017 to give an indication of their expected availability throughout the interview period. Following pre-interview moderation, the Secretariat prepared an interview schedule aiming as far as possible to meet the applicant's own wishes as to availability and location, subject to refusal and other similar issues.

25. Applicant Interview – Preparation

In the course of pre-interview moderation, the Panel identified any areas of particular focus for the interviews of each applicant, in addition to those areas identified by the graders. The Panel also agreed a framework of specimen questions, which interview pairs were invited to draw on, subject to any directions which the Panel had given at pre-interview moderation, or to any other matters appearing to the interview pairs to be appropriate for each individual applicant.

26. Applicant Interview - Form and Content

The purpose of the interview was to provide further evidence as to the competencies, especially in respect of those competencies where adequate evidence was lacking or unclear. The interview could explore circumstances which cast light on the level at which the competencies were demonstrated by the applicant, and allowed any criticisms of the applicant to be tested.

The interviewers probed for examples of excellence and sought to resolve any questions on the competencies. Questioning could be directed to any or all of the competencies, although the extent to which any one competency was the subject of questioning varied according to the issues arising in respect of each application. The evidence from interview was used to augment the information in the assessments and the applicant's own self-assessment. While it might confirm or require an adjustment to the marking previously given on a competency, the interview was not in itself determinative. The decision whether to recommend an applicant was one for the full Panel in final moderation. However, where applicants came across poorly at interview, the Panel re-examined the assessments and the self-assessment particularly carefully.

The Secretariat wrote in advance to all applicants to be interviewed with information about the nature and format of the interview.

27. Applicant Interviews

Applicant interviews were carried out between 18 September and 13 October 2017. Interviews were held in London and Manchester.

For the third year, each interview pair conducted four, rather than five, interviews each day. This provided more time for the interview pairs to discuss each applicant and to dictate the interview record before the next interview. It also meant that, although the aim was for each interview to last 35-40 minutes, it was possible to take longer when necessary, especially with borderline applicants. Given the importance of the decision whether or not to recommend an applicant for appointment, and the importance of the interview in adding to the information available to the Panel, the Panel considers the change to have been well worthwhile. It must be desirable for the Panel to have the best possible information available when making its decisions on recommendation, and the flexibility achieved by interviewing fewer applicants each day contributes towards that objective.

Each interview pair comprised one legally qualified and one lay Panel member. Applicants were informed who were to be their interview pair on arrival at the interview venue. A brief biography of each

of the interview pair was provided in the interview waiting room. Those biographies were also available on the QCA website.

The Panel sought to enable a third (non-grading) Panel member to be one of the two interviewers, to secure wider involvement of Panel members in the detailed consideration of each case, and that was achieved in all but five cases.

After the interview, the interviewing pairs revisited each of the competency scores taking account both of the provisional grading and the new evidence at interview. To assist the Panel in developing the effectiveness of the interviews, and with advance notification to the applicant concerned, the Chief Executive sat in on four interviews to observe the proceedings and to provide feedback to the Chair of the Panel on Panel members' conduct of the interview. He played no part in the interview itself, nor in the discussion between the Panel pair after the interview.

28. Final Moderation

Moderation by the full Panel took place over two full days, on 24 and 25 October 2017. The purpose of moderation was to ensure that a consistent standard had been applied to all applicants and in particular to afford the full Panel the opportunity to resolve those cases which presented particular difficulties. This ensured that full Panel agreement was secured to the list of names to be recommended to the Lord Chancellor.

For each applicant, the Panel had before it the up-to-date rating sheet and score sheet (which included evidence from assessors), previous moderation records, and the interview record with the interviewing pair's conclusions. Full sets of the assessments and material from the application form were also available where required. The Panel had no information about the personal characteristics of the applicant, or whether they had applied before, except as was apparent at interview or from the assessments or other documentation.

The Panel reviewed all those interviewed on a case by case basis, considering the evidence available as to the demonstration of the competencies in an open and, at times, vigorous discussion. In this way, the conclusions on the extent to which each applicant demonstrated the competencies and the outcome of their application were settled.

At the conclusion of the moderation, the Panel was informed of the effect of their decisions in the light of factors in the monitoring data or in relation to applicants' practices.

A commentary by the Panel on its recommendations this year is attached at Annex C.

29. Issues of Character

The Panel considers issues of character on an anonymised basis at pre-interview moderation. This timing enables any questions about a serious character issue to be put to the applicant at interview if appropriate, although to date, that facility has not been used.

Based on the information supplied by the applicants and by the professional bodies in response to the request made on behalf of the Panel, the Character Issues Sub Panel considered all the issues in an anonymised form and reported to the full Panel at pre-interview moderation. This enabled the Panel to take a view of the seriousness of any character issue. There were no applicants this year in respect of whom there were serious character issues which would have made it inappropriate to recommend appointment, regardless of the degree to which the applicant satisfied the competencies.

30. Recommendations

The Panel has made 119 recommendations for appointment (44% of all applicants and 64% of applicants who were interviewed). The Panel's recommendations about the 187 applicants interviewed and the names of the 85 filtered out before interview are set out in an accompanying document.

31. Repeat Applicants

Although an applicant may have applied longer ago, the Secretariat looks back only over the previous three competitions in identifying 'repeat applicants' for statistical and monitoring purposes. In 2017, 101 applicants (37%) had applied in at least one of the three previous competitions.

The Secretariat set out to provide that, where possible, each applicant should not be graded and/or interviewed by the same pair as in either of the previous two years, but should have at least one fresh Panel member at each stage, and ideally two Panel members who were fresh to the applicant for any interview. This was achieved in every case.

Of the repeat applicants, 27 were not invited to interview, although 13 of these had been interviewed in at least one of the previous three years. The number not interviewed represented 27% of all repeat applicants, compared to 34% of first time applicants not invited to interview. In all, 47 (47%) repeat applicants were recommended for appointment compared to 72 (42%) of new applicants.

32. Feedback and Notification

To enable the Process to be of assistance to unsuccessful applicants, and to assist further professional development, individual written feedback is provided to all unsuccessful applicants.

The Panel has sought to improve the range and quality of feedback over the years and has developed its practice considerably in the light of advice from the Complaints Committee and others.

Feedback was sent to the applicants who were not invited to interview on 17 October 2017. The text of the feedback was prepared by the Secretariat, drawing on the grading report prepared by the Panel pair and the Panel's pre-interview moderation. The drafts were amended if necessary, and approved, by the lead grader and by the Chair of the Selection Panel.

Once the Panel's recommendations are confirmed, the Panel proposes to provide written feedback to the remaining unsuccessful applicants. This feedback will be included with the letter notifying the unsuccessful interviewed applicants of the outcome of their application, and will be sent at the same time as the notifications to those applicants whose appointment has been approved by The Queen.

A note outlining the way in which the Panel approaches the provision of feedback to applicants not invited to interview was published on the QCA website. It is intended to publish a similar note about the feedback to those not recommended after interview.

33. Complaints : 2017 Competition

Any applicant who wishes to make a complaint about the 2017 competition has (under the agreed Process) 60 calendar days after the announcement of the eventual appointments to make the complaint.

34. Complaints : 2016-17 Competition

There were two complaints to the Complaints Committee from applicants in the 2016-17 competition.

One of these was upheld in part. The Complaints Committee directed the Panel to re-consider the applicant's application, because the Committee considered that the Selection Panel had not applied its Guidance properly. The Selection Panel had significant concerns about the Committee's remit and procedure, but nevertheless decided to comply with the direction. The applicant was (with the applicant's consent) re-interviewed. That applicant is included in the figures reported above for the 2017 competition.

The other complaint raised a wide range of issues. All of the complaints raised were rejected.

The Selection Panel's experience of the Complaints Committee this year has raised important issues about both the remit of the Complaints Committee and about its procedure. The Panel has drawn these issues to the attention of the professional bodies.

Sir Alex Allan Chair, Queen's Counsel Selection Panel
October 2017

Annex A - The Competency Framework 2017

Annex B - Rating scales 2017

Annex C - Commentary by Queen's Counsel Selection Panel on its recommendations 2017

THE COMPETENCY FRAMEWORK 20117

The Panel will judge how far an applicant meets the competencies as described by the passage in italics. The examples provided are intended to assist applicants, assessors and others. Consideration of the demonstration of the competency is not limited to the examples quoted.

To merit recommendation for appointment all competencies must be demonstrated to a standard of excellence in the applicant's professional life. In general the Selection Panel will be looking for the demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity. Competency B (Written and oral advocacy) *must* be demonstrated in such cases.

A. Understanding and using the law

Has expert, up-to-date legal knowledge and uses it accurately and relevantly, and becomes familiar with new areas of law quickly and reliably.

Examples:

- ✓ Is up to date with law and precedent relevant to each case dealt with, or will quickly and reliably make self familiar with new areas of law.
- ✓ Draws on law accurately for case points and applies relevant legal principles to particular facts of case.

B. Written and oral advocacy

Develops and advances client's case to secure the best outcome for the client by gaining a rapid, incisive overview of complex material, identifying the best course of action, communicating the case persuasively, and rapidly assimilating the implications of new evidence and argument and responding appropriately.

The Panel will be looking both at the written and oral aspects of advocacy. Oral advocacy includes advocacy in a court or tribunal, mediation, arbitration or negotiation.

Examples (Written advocacy):

- ✓ Writes arguments accurately, coherently and simply, and in an accessible style.
- ✓ Presents facts and structures arguments in a coherent, balanced and focused manner.
- ✓ Deals effectively with necessary preliminary stages of legal disputes.
- ✓ Gains and gives an accurate understanding of complex and voluminous case material.
- ✓ Appreciates aspects of the case that are particularly important, sensitive or difficult and appreciates the relative importance of each item of evidence.
- ✓ Prepares thoroughly for the case by identifying the best arguments to pursue and preparing alternative strategies.
- ✓ Anticipates points that will challenge an argument

Examples (Oral advocacy)

- ✓ Deals responsibly with difficult points of case management and disclosure.
- ✓ Presents facts and structures arguments in a coherent, balanced and focused manner.
- ✓ Assimilates new information and arguments rapidly and accurately.
- ✓ Immediately sees implications of answers by witness and responds appropriately.
- ✓ Listens attentively to what is said paying keen attention to others' understanding and reactions.
- ✓ Accurately sees the point of questions from the tribunal and answers effectively.
- ✓ Gives priority to non-court resolution throughout the case where appropriate, identifies possible bases for settlement and takes effective action.
- ✓ Prepared and able to change tack or to persist, as appropriate.
- ✓ Deals effectively with points which challenge an argument.

C. Working with others

Establishes productive working relationships with all, including professional and lay clients, the judge and other parties' representatives and members of own team; is involved in the preparation of the case and leads the team before the court or other tribunal

Examples:

- ✓ Behaves in a consistent and open way in all professional dealings.
- ✓ Establishes an appropriate rapport with all others in court and in conference.
- ✓ Advances arguments in way that reflects appropriate consideration of perspective of everyone involved in the case.

- ✓ Helps the client focus on relevant points and is candid with the client.
- ✓ Explains law and court procedure to client and ensures the client understands and can decide the best action.
- ✓ Keeps lay and professional clients informed of progress.
- ✓ Is prepared to advance an argument that might not be popular and to stand up to the judge.
- ✓ Responds to the needs and circumstances of client (including client's means and importance of case to client and bearing in mind duty to legal aid fund) and advises client accordingly.
- ✓ Meets commitments and appointments.
- ✓ Accepts ultimate responsibility for case when leading the team.
- ✓ Motivates, listens to and works with other members of own team.
- ✓ Aware of own limitations and seeks to ensure that they are compensated for by others in team.
- ✓ Able to take key decisions with authority and after listening to views.
- ✓ Identifies priorities and allocates tasks and roles when leading the team.

D. Diversity

Demonstrates an understanding of diversity and cultural issues, and is proactive in addressing the needs of people from all backgrounds and promoting diversity and equality of opportunity

Examples:

- ✓ Is aware of the diverse needs of individuals resulting from differences in gender, sexual orientation, ethnic origin, age and educational attainment and physical or mental disability or other reason, and responds appropriately and sensitively.
- ✓ Is aware of the impact of diversity and cultural issues on witnesses, parties to proceedings and others as well as on own client, and adjusts own behaviour accordingly.
- ✓ Takes positive action to promote diversity and equality of opportunity.
- ✓ Understands needs and circumstances of others and acts accordingly.
- ✓ Confronts discrimination and prejudice when observed in others; does not let it pass unchecked.
- ✓ Acts as a role model for others in handling diversity and cultural issues.

E. Integrity

Is honest and straightforward in professional dealings, including with the court and all parties

Examples:

- ✓ Does not mislead, conceal or create a false impression.
- ✓ Honours professional codes of conduct.
- ✓ Where appropriate refers to authorities adverse to the client's case.
- ✓ Always behaves so as to command the confidence of the tribunal and others involved in the case, as well as client.
- ✓ Acts in professional life in such a way as to maintain the high reputation of advocates and Queen's Counsel.

QC Secretariat

Rating Scales 2017

(as agreed at the Panel meeting on 13 June 2017)

ANNEX B

Overall grading	Criteria	Definition	Best and worst scores Competencies A-D only [not in order]	Comments
A	<p>A consistently outstanding performer or an excellent performer. Called to interview.</p> <ul style="list-style-type: none"> ▪ Marked 7 for any 3 competencies, but (for appointment) always with a 7 in Competency A and B. ▪ Marked 6 in the remaining competency 	STRONG/GOOD EVIDENCE OF EXCELLENCE	<p><i>Best:</i> 7777</p> <p><i>Worst:</i> 7776</p>	<p><i>To be interviewed [and it may be expected recommended]</i></p> <p>[may include 0 in competency D at grading stage: Thus: 7770]</p>
B	<p>Generally a good and sometimes excellent performer. Called to interview.</p> <ul style="list-style-type: none"> ▪ Excellence (6 or 7) in at least <u>three</u> competencies, but with a minimum of 6 in competencies A and B. ○ No competency below 5 (ie never less than competent in any competency). 	SOME EVIDENCE OF EXCELLENCE	<p><i>Best:</i> 7766</p> <p style="text-align: center;">OR</p> <p>7775</p> <p><i>Worst:</i> 6665</p>	<p><i>To be interviewed (subject to full Panel moderation) [but does not appear at this point to merit recommendation]</i></p> <p>[may include 0 in competency D at grading stage Thus: 7760 or 7660 or 6660 or 6650*]</p>
C	<p>At best a satisfactory performer who may have excellence in some competencies, but may show weaknesses in one or more competencies. Not called to interview</p> <ul style="list-style-type: none"> ▪ Competency A and/or B marked 5 at best; ▪ One or more competencies marked 4 or below. 	INSUFFICIENT EVIDENCE OF EXCELLENCE	<p><i>Best:</i> 7774</p> <p style="text-align: center;">OR</p> <p>7577</p> <p><i>Worst:</i> 1111</p>	<p><i>Does not appear to merit interview, subject to full Panel moderation</i></p> <p>[may include 0 in competency D at grading stage: eg 7740]</p>
0	<p>One or more of competencies A-C marked as 0, and unlikely to be made up at interview</p>	INSUFFICIENT EVIDENCE	<p>0 in one or more competencies A-C</p>	<p><i>To be filtered out subject to Full Panel Consideration</i></p>
P	<p>At Provisional Grading or at interview if a Panel Pair is unable to reach a conclusion they may mark an applicant P, requiring decision by full Panel.</p> <p><i>Ideally, even if Panel discussion is required, some indication of possible grading outcome is helpful</i></p>	Panel Consideration	n/a	Full Panel Consideration

* At pre-interview moderation stage only, a 'B' is achievable with a score of 6650

Ratings for competencies

Competencies as an advocate		Grouping
Insufficient evidence to form any view of the competency.	0	
Generally poor performance in this competency.	1	Poor
Significant weakness evident in this competency.	2	Not satisfactory
Some weakness evident in this competency.	3	
Generally satisfactory performance in this competency, but limited, if any, evidence of excellence.	4	Competent
Some evidence of excellence in this competency, but not enough or consistent enough.	5	
Evidence of excellence in this competency.	6	Excellent
Strong evidence of excellence in this competency.	7	

Ratings for Competency E Integrity

Evidence of lack of Integrity	N
Uncertainties over Integrity	??
Positive evidence of Integrity or absence of negative evidence	Y

All applicants not receiving Y as to Competency E Integrity should be referred to Full Panel for consideration.

Ratings for substance, complexity, or particular difficulty or sensitivity

Cases not generally of substance, complexity, or particular difficulty or sensitivity, which calls into question the applicant's ability to demonstrate Competencies to the necessary standard	N
Uncertainty over substance, complexity, or difficulty or sensitivity of cases and therefore applicant's demonstration of the competencies	??
Cases all or generally of substance, complexity, or particular difficulty or sensitivity	Y

Comment should be made on the score sheet in respect on any applicant not securing Y for substance.

COMMENTARY BY QUEEN'S COUNSEL SELECTION PANEL ON ITS RECOMMENDATIONS 2017

1. This annex is intended to provide the Lord Chancellor with the Selection Panel's comments on our recommendations this year and on matters which have emerged from consideration of the applications.

Decision making

2. We have applied a common standard to all applications. Our arrangements have enabled Panel members to work in pairs with a number of different colleagues. We have sought to reinforce consistency in marking by benchmarking; by grading in a number of differently composed pairs (rather than dividing the Panel into five fixed pairs); by seeking to involve a further Panel member in any interview; and by ensuring that all cases are moderated by the full Panel, both at the pre-interview stage and in deciding the final recommendation.

3. We believe that the procedures we have adopted have provided a fair and even-handed consideration of all applicants and that Panel members share a common view of the standard applicants must attain. Inevitably, at the margins there are some fine distinctions to be made. In many applications the interview was particularly helpful, especially in providing evidence in relation to diversity.

4. At our final moderation, we re-examined as a full Panel the conclusions of the interviewing pairs on each interviewed applicant, where necessary revisiting the views of the grading pair or of the Panel itself at pre-interview moderation. We collectively settled, confirmed or modified the scores received by the applicant, consulting the interview record, assessments and other documentation as appropriate.

The Standard of Excellence

5. As a Panel we keep the standard of excellence under review, considering each year how far the standard requires any refinement, in particular in relation to making clear the distinction between excellent advocates who merit silk, and those who are competent or even very good, but do not in our judgement reach the required standard. We have sought to apply the same standard as in the previous years. That standard has (we believe) been well received by successive Lord Chancellors, by the judiciary, and by the legal profession. We were reassured on this by our contact with the professional bodies and through the regular surveys of assessors which we now conduct.

6. The standard to be applied is *excellence*. We have applied a common standard to all applications. To be recommended for appointment, applicants needed to demonstrate strong evidence of excellence in both Competency A (Understanding and using the law) and Competency B (Written and oral advocacy) and in either Competency C (Working with others) or Competency D (Diversity), with good evidence of excellence in the remaining competency.

7. The Process requires that advocacy (written or oral) should be in relation to disputes actually or potentially before courts and tribunals (including arbitration tribunals). We have taken the view that to be recommended, applicants need to demonstrate evidence of excellence in both written and oral advocacy. Written advocacy is considered alongside oral advocacy, as

set out in the Competency Framework. We recognise the importance in advocacy of seeking to reach agreement without the need for a dispute to come to court, and that different fields of practice will provide applicants with differing opportunities for appearing in court. We invited applicants to comment on both aspects in their self-assessment, and invited assessors to comment on both aspects in their assessments. At grading, interview and moderation we considered the two aspects separately and then together, in order to form an overall view of the applicant's demonstration of this competency.

8. Our approach to diversity is described at Section 20 of the report. The agreed Process and Competency Framework identifies diversity as a separate competency in which excellence is to be demonstrated. We recognise the importance attached to diversity by successive Lord Chancellors and Lord Chief Justices, and by the leaders of the profession. Applicants who fall short of excellence in relation to diversity are not recommended for appointment. This year, there were X cases in which failure to demonstrate evidence of excellence in diversity was the sole reason for our decision not to recommend appointment, but it was a material factor in Y cases of applicants who reached the necessary standard both on "understanding and use of the law", and on "written and oral advocacy", but did not demonstrate **strong** evidence of excellence either in "working with others" or in "diversity".

Range and Quality of assessments

9. We are again very grateful to all the judicial, practitioner and client assessors who have made an indispensable contribution to the appointment process by providing assessments. The success of this appointments scheme depends heavily on the support and commitment of the judiciary and the legal profession in providing high quality assessments. We would not be able to do our job without the readiness of assessors to let us have their views about the extent to which applicants demonstrate the competencies.

10. The quality of assessments has been maintained this year. However, once again the overwhelming majority of assessments, particularly from clients, were supportive of the applicant, with many assessors apparently reluctant to make clear where an applicant, although an entirely competent and satisfactory advocate, does not meet the very high standards required for silk. Around 89% of assessments graded the applicant as very good or excellent (compared with 90% last year)—this was the case for 83% of judicial assessments, 91% of practitioner assessments, and for 99% of client assessments. Some assessors seemed disinclined to be critical even where they do not give praise. Of judicial assessments, 46% graded the applicant as excellent.

Interview

11. We see the interview as giving the applicants 'a fresh opportunity to shine' and to provide further evidence to inform our final decision. Some applicants do indeed shine, but others very evidently do not. The interview is not determinative, but where an applicant has come across poorly, we re-examine all the evidence carefully. In some cases we have concluded that a poor performance at interview has not been such as to outweigh the evidence provided by the assessors. In a small number of other cases, however, especially where a weakness identified at interview was reflected in evidence provided by an assessor, the interview has served to confirm the assessor's doubt and we have accordingly given that much greater weight. In other words, a poor interview is not necessarily fatal to an application, but it will trigger serious reconsideration.

12. While we recognise that the skills demonstrated at interview are not necessarily the same as the skills required in advocacy, the Panel's view is that the evidence gathered from interview is of considerable importance in contributing to the overall picture of the applicant and thus in informing the decision whether or not to recommend for appointment. This year (as last) it was striking that a number of apparently borderline applicants acquitted themselves particularly well at interview and were able to dispel reservations arising from the Panel's interpretation of their assessments.

Numbers of recommendations

13. We recommend the appointment this year of 119 applicants (44% of applicants). We have reached our recommendations by considering each application in accordance with the Process. The agreed Process makes no provision for a quota, either on numbers overall, in relation to geography, or in specific fields. We are confident that all our recommendations are well-founded on the evidence we have had, which has been fully tested by the whole Panel during pre-interview and final moderation.

14. Historically, silks have represented about 10% of all barristers. That remains the case so far as the Bar as a whole is concerned, although the latest Bar Standards Board figures suggest that QCs represent a higher proportion, around 13%, of self-employed barristers. Although the number of appointments as silk over the last five years has exceeded the number in the last five years of the old system, that must be seen in the context of a significantly larger pool of potential applicants, resulting from increased numbers at the Bar and an increased number of solicitors with rights of audience in the higher courts. Moreover, the quality of applicants over the years has remained very high.

Specialist practices

15. The nature of some kinds of practice means that an applicant might seldom come to court. Where it appears that an applicant is highly successful at settling cases, we have accepted that only rarely will he or she appear before a court in cases of substance, complexity, particular difficulty or sensitivity; and we have been ready to accommodate that. We have, for example, recommended for appointment practitioners in the fields of [personal injury and clinical negligence]. Where appropriate, we have taken account of evidence relating to settlement discussions. We have also recommended other applicants with practices which may bring them to court less frequently, for example revenue practitioners.

Other Jurisdictions

16. Although all applicants must hold rights of audience in the higher courts in England and Wales, we have, as in previous competitions, also considered some applicants who have appeared before various international courts or tribunals, or in other jurisdictions. Although we have dispensed with the previous somewhat complex rules concerning eligibility to provide judicial assessments, it remains the case that evidence is of most value if it comes from an assessor with good knowledge of what is expected of silks in the higher courts in England and Wales, and if it relates to proceedings which are reasonably analogous to proceedings in those courts. [We have recommended a very small number of applicants who have little or no practice in England and Wales, but have nevertheless demonstrated excellence in all the competencies].

17. We are conscious that the award of QC is intended to denote excellence in advocacy in the higher courts of England and Wales. Accordingly, where applicants' practice is primarily

elsewhere, whether in Europe, in a different jurisdiction or in arbitration work, the Panel has to give particular attention to the question of whether it is satisfied that the applicant has established their excellence in relation to the higher courts of England and Wales. The greater any differences in the law and procedure of the jurisdiction in which the applicant generally practises, the more difficult that is likely to be. As a result, there may be a very small number of applicants whose excellence in their normal area of practice is unquestioned, whom the Panel is nevertheless unable to recommend because it cannot be satisfied that their excellence would apply to work in the higher courts of England and Wales.

Other Judicial Assessors

18. Assessments have been received in relation not only to cases before the senior courts of England and Wales, and European or international courts, but also in relation to arbitrations, public and planning inquiries, professional disciplinary bodies and specialist tribunals. Many recommended applicants received assessments from judicial assessors who were not in fact judges as commonly understood, such as planning inspectors, arbitrators or others.

19. Whilst we consider that assessments from senior judges (i.e. High Court Judges or more senior judges) are particularly valuable, they are not essential. We also value the perspectives of other judicial assessors, such as planning inspectors, tribunal judges, Masters and District Judges, who are able to bring their own specialist expertise or local knowledge to inform our view of the applicant. Where possible, we sought assessments which relate to advocacy in more than a single forum, and in appropriate cases included assessments in relation to an appellate tribunal. This year we have recommended 21 applicants (18% of our recommendations) who have no assessments from current or former High Court or more senior judges in England and Wales. This compares with 18% last year, and 15% in each of the previous two years.

Evidence from Assessments

20. We are aware of concerns in the past that, as a result of more limited exposure, certain groups of applicants may be less able to attract sufficient evidence because they found it difficult to name sufficient assessors, and that any named assessor had insufficient exposure to the applicant's work to be able to provide a good quality assessment. This tends to arise primarily in the judicial category of assessors. In addition, some applicants have been involved in a single large case or major public inquiry which could potentially impact on their exposure to a wide range of assessors.

21. Our approach has been that to demonstrate excellence across the competencies the applicant must have supportive evidence not only relating to each competency but also from each of the judicial, practitioner and client assessor categories. Where, because of the nature of his or her practice, an applicant may appear before judges (or equivalents) relatively infrequently, and for that reason secured relatively little judicial evidence, we have taken into consideration how far that deficiency has been made up by strongly supportive evidence from the practitioner and client categories.

22. As noted at Section 12 of our report, this year, all but one applicant achieved a full complement of assessments. The Panel's policy has been that while an application which names comparatively few assessors may appear defective or weak, it had been made in good faith and in full knowledge of the published requirements. The Panel agreed that, provided that the applicant fulfills the eligibility requirements, the application should be treated no differently

from other applications and should be processed in the usual way. This year there were 5 applications with a shortfall in the number of assessors named. The Panel has been particularly careful in those cases to ensure that applicants do not appear to have deliberately restricted the number of assessors listed in order to minimise the Panel's choice of assessors. The Secretariat wrote to five applicants who provided six or fewer judicial assessors without giving a full explanation of the shortfall, to seek their explanation of the matter.

Impact of a Single Critical Assessor

23. The Selection Panel has always said that the views of a single assessor, whether favourable or critical, are never determinative, however eminent the assessor. The Selection Panel thought it might be useful to tease out what is meant by that.

24. This approach originated as a response to the widespread belief that under the pre-QCA system, the senior judges each effectively had a black ball and could veto applicants. However, the Selection Panel does not mean that an assessment which is out of line with the other assessments received on an applicant should be wholly disregarded; the Panel means that it should be treated with caution. A single critical assessor is often described as an outlier. At pre-interview moderation an "outlier's" assessment will generally be treated broadly as if it were as equivalent to the next weakest assessment. However, this does not apply in the very rare circumstances where there is a suspicion of personal animus or other improper motive leading an assessor to damn the applicant – in that case the assessment will be wholly disregarded except to the extent it is corroborated.

25. However, although a single adverse assessment will not deprive an applicant of interview if there is otherwise sufficient evidence of excellence, a single adverse assessment may be a key factor in a decision not to recommend appointment. The Selection Panel will generally ask for criticisms made in such an assessment to be explored at interview, to the extent that that can be done without jeopardising the confidentiality of assessments. If the Panel concludes after interview that the criticisms (even from a single assessor) were well-founded; were serious; did not amount to a one-off failure; and cannot be regarded as historical, the criticisms concerned may well lead to a decision not to recommend appointment even if no other assessor has raised similar points. So in that way, the view of a single assessor could be decisive (in that but for that assessor the issues of concern might never have come to light), even though it is not on its own conclusive.

Being Led by a QC

26. Many good quality juniors will be led by a QC in their most significant cases. Nevertheless, many criminal law applicants, in particular, may be expected to give examples of cases where they have themselves acted as a leader. Increasingly, we have looked for such experience to test an applicant's readiness for silk, although we recognise that this is not always possible. Being led can reduce the evidence on which a judicial assessor can comment, especially if the entire oral advocacy is undertaken by the leader. However, the leader can be cited as a practitioner assessor (and indeed professional clients may be well aware of the role played by the applicant in preparing the case and securing an outcome).

27. In general terms, where it was clear that a judicial assessor was less well placed to comment on performance against a particular competency, we took that into account. Provided that there was evidence from other sources that the standard of excellence was met, this did not prevent a recommendation for appointment. Some applicants have clearly had difficulties

naming judicial assessors with adequate experience of their work to give a worthwhile assessment.

Older Cases

28. We have sought to assess each applicant's *current* demonstration of the competencies and his or her suitability to take silk this year. The agreed Process envisages assessments in relation to cases of substance, complexity, or particular difficulty or sensitivity in the last three years, although it has been customary in recent years for the Selection Panel to ask for evidence to come primarily from the last two years. This year, following early findings of some research into under-application by women, the Guidance was amended to make it clear that it was perfectly acceptable for applicants to go back three years.

29. On some applications, a number of the assessors named came from cases which were older still. Evidence from such cases may well be less reliable because assessors may have more difficulty recalling the detail for an assessment. In any event, experience many years ago may not directly address the level at which the competencies are currently demonstrated. Nevertheless, we have used our discretion to have regard to cases older than the usual three year period. In exercising the discretion we have had regard to the extent to which we could rely on the older evidence as evidence of current suitability for silk. We could readily take account of some older cases where there was also some relatively recent evidence, and all the evidence presented a consistent picture. We also took account of an applicant's practice and personal circumstances, such as absence from practice for health, family or other reasons

Diversity Monitoring

30. As before, applicants were invited but not required to complete a form for diversity monitoring purposes. This sought information about age, gender, ethnic origin, sexual orientation, and whether the applicant had a disability. All applicants completed the form in part, although five preferred not to state their ethnic origin and three did not answer; and 25 preferred not to state their sexuality, and 11 did not answer. In comparison, last year 10 applicants withheld information about their ethnic origin and 29 about their sexuality. The forms were detached from the application form and were not made available either to the Selection Panel or to assessors. The Selection Panel was informed of the outcome of their decisions in terms of diversity only after the relevant decisions had been made.

Gender

31. There were 50 women applicants this year (around 18% of all applicants). Of those, 40 (80%) were interviewed (rather more than the proportion of men interviewed) and we recommend 32 for appointment. That means we recommend 64% of women applicants, compared with 39% of men. Last year we recommended 31 women for appointment, 55% of women applicants, compared with 41% of men.

Ethnicity

32. In all, this year 33 applicants declared an ethnic origin other than white. This was around 12% of all applicants, the same as the latest available figures for the percentage of BAME practitioners at the Bar.

33. We interviewed 23 (70%) of those applicants and have recommended 18 BAME applicants for appointment. That means we have recommended 55% of BAME applicants compared with 43% of applicants whose declared ethnic origin is white.

Disability

34. This year three applicants declared a disability on the application form. All of these were filtered out without interview.

Age

35. There were 18 applicants aged 40 and younger on the date applications closed. Of those, 15 (83%) were interviewed, and 12 (67%) have been recommended for appointment.

36. There were 73 applicants aged 51 and over. Of those, 41 (56%) were interviewed, and 21 (29%) have been recommended for appointment.

Employed advocates

37. There were seven employed advocates amongst the applicants and three were interviewed. Two have been recommended for appointment. Last year, none of the six employed applicants were recommended for appointment.

Solicitors

38. This year there were 10 applications from solicitor advocates, compared with 13 last year. Six were interviewed and five have been recommended for appointment.

39. The agreed Process was designed to enable solicitor advocates to seek appointment with the assurance that they would be assessed fairly alongside barrister applicants. The number of applications (and of recommendation for appointment) is a little lower than in previous years, and we remain concerned that the level of applications from solicitor advocates remains comparatively low. For whatever reason, there appears to be some hesitancy on the part of solicitor advocates to apply for silk, even where they may be well qualified to do so. We will continue to liaise with the Solicitors Association of Higher Courts Advocates and with the Law Society to explore what can be done to overcome this problem.

Sexual orientation

40. 11 applicants did not answer and 25 ticked the 'prefer not to say' option. Of the remaining 236 applicants, six identified as gay men and three as gay women. Of those nine gay applicants, seven were interviewed, and four have been recommended for appointment. There was one bisexual applicant who was filtered out.