



GUIDANCE FOR PRACTITIONER ASSESSORS 2022

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

Introduction

This document aims to assist practitioners (fellow advocates) who have been asked to provide an assessment in the 2022 QC competition.

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

Background

1. The award of Queen's Counsel is intended to recognise excellence in advocacy in cases of substance dealt with in the higher courts of England and Wales; in arbitrations conducted under the law of England and Wales; or in tribunals, inquiries or equivalent forums.
2. Decisions on whether an applicant should be recommended for appointment are made by an independent Selection Panel comprising retired judges, practising barristers and solicitors, and distinguished non-lawyers.
3. To be appointed, an applicant must demonstrate each of the competencies to a standard of excellence. The Competency Framework is at Annex A.
4. The Selection Panel bases its decisions on **evidence** of excellence drawn from the applicant's self-assessment, information from assessors listed by the applicant, and an interview with each applicant who secures one. The most important element is the evidence from assessors. The success of the QC appointment system thus depends largely on evidence from assessors with recent professional experience of seeing the applicant in practice. Evidence of performance falling short of the required standard is as important as evidence of excellence.



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

Confidentiality

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

Contact with applicants

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

Completing the assessment form

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

Cases of substance, complexity, or particular difficulty or sensitivity

(Part 2, Q.2)

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

Competency A – Understanding and Using the Law

18. It is particularly useful for the Panel to have evidence about applicants' ability to deal with "new law" – either law in an area outside the applicant's usual specialism, or new developments in law. Experience shows that there is often a shortage of evidence on this aspect from assessors.

Other jurisdictions

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

Competency B – Written and Oral Advocacy

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

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

Competency C – Working with Others

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

Competency D – Diversity

25. The diversity competency aims to ensure that all those recommended have a good understanding of diversity issues, demonstrate appropriate professional behaviour, and are proactive on diversity matters. The competency is not of itself intended to promote the appointment of under-represented groups. Accordingly, being a member of an under-represented group is not of itself evidence (or even an indication) that an individual meets the standard required.
26. The Panel understands that many judicial assessors may not be well-placed to comment on the diversity competency. It is perfectly acceptable to leave that section blank. However, where an assessor **does** have relevant evidence – such as the way in which an applicant dealt with any particular needs of an individual party or witness in court –the Panel finds it useful.

Overall rating – (Part 4)

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

Explanation of Overall Rating (Part 5)

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

Views of others (Part 6)

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

Comparisons with other applicants

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

Previous assessments

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

Information for Assessors

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



Returning completed assessment forms

37. It would help if you could return your assessment(s) by the date specified in the letter. We can almost always extend time, but if you need more, please let us know as soon as possible.
38. On-line forms will be received automatically when you click "Submit" on completion of your assessment. Assessment forms completed on the Microsoft Word form can then be emailed to assessments@qcappointments.org.
39. Completed hard copy or printed out assessments can be sent by post.
40. Forms submitted electronically will receive an automated response. We will acknowledge forms received through other channels unless you ask us not to do so.

Contacting us

41. Please contact the QCA Chief Executive by email or telephone if you would like information or assistance. We are always happy to help. Further information about the appointment process as a whole is also on www.qcappointments.org.
42. Our contact details are below. If your enquiry relates to a particular applicant, please give the applicant's name and ID.

Queen's Counsel Appointments

16 Red Lion Square, London WC1R 4QH

Telephone: 0207 831 0020

Email: assessments@qcappointments.org

or: Russell.wallman@qcappointments.org

April 2022



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

The Panel will judge how far an applicant meets the competencies as described by the passage in italics. The examples provided are intended to assist applicants, assessors and others. Consideration of the demonstration of the competency is not limited to the examples quoted. To merit recommendation for appointment all competencies must be demonstrated to a standard of excellence in the applicant's professional life. In general the Selection Panel will be looking for the demonstration of the competencies in cases of substance, complexity, or particular difficulty or sensitivity. Competency B (Written and Oral Advocacy) *must* be demonstrated in such cases.

A. Understanding and using the law

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

Examples:

- ✓ Is up to date with law and precedent relevant to each case dealt with, or will quickly and reliably make self familiar with new areas of law.
- ✓ Draws on law accurately for case points and applies relevant legal principles to particular facts of case.
- ✓ Makes effective use of case law and other sources in addressing legal issues which are not decided or settled.
- ✓ Shows depth of understanding of the legal principles and issues involved in a case.

B. Written and oral advocacy

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

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

Examples (Written advocacy):

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

Examples (Oral advocacy)

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

C. Working with others

Upholds the standards of behaviour expected of advocates and acts so as to secure the confidence of the court and of fellow advocates; establishes productive working relationships with all, including professional and lay clients, the judge and other parties' representatives and members of own team; is involved in the preparation of the case and leads the team throughout.

Examples:

- ✓ Behaves in a consistent and open way in all professional dealings.
- ✓ Establishes an appropriate rapport with all others in court and in conference.

- ✓ Advances arguments in a way that reflects appropriate consideration of perspective of everyone involved in the case.
- ✓ Where appropriate, refers to authorities adverse to the client's case and to arguments which unrepresented parties could properly advance.
- ✓ Is meticulous in making full and frank disclosure whenever appropriate.
- ✓ Helps the client focus on relevant points and is candid with the client.
- ✓ Explains law and court procedure to client and ensures the client understands and can decide the best action.
- ✓ Keeps lay and professional clients informed of progress.
- ✓ Is prepared to advance an argument that might not be popular and to stand up to the judge but does not make assertions or allegations which are unsupported by a proper factual basis or (where appropriate) by instructions from clients.
- ✓ Responds to the needs and circumstances of client (including client's means and importance of case to client and bearing in mind duty to legal aid fund) and advises client accordingly.
- ✓ Meets commitments and appointments.
- ✓ Accepts ultimate responsibility for case when leading the team.
- ✓ Motivates, listens to and works with other members of own team.
- ✓ Aware of own limitations and seeks to ensure that they are compensated for by others in team.
- ✓ Able to take key decisions with authority and after listening to views.
- ✓ Identifies priorities and allocates tasks and roles when leading the team.

D. Diversity

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

Examples:

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

E. Integrity

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

Examples:

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

QCA February 2022

Approved Assessment - Knowledge of the Applicant

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

Current public law care case (M case) - complex and unusual set of facts. The applicant acts for the mother, led by leading counsel. The applicant has attended a contested hearing without her leader managing an urgent application to separate children from carers. The applicant has drafted responses to the IA case with skill, care and a detailed knowledge of the case papers. I have seen both the applicant's oral and written advocacy in this more recent case.

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

The first case cited was an extraordinarily complex case with a significant medical history relating to both mother and the children. The applicant represented the children and led a second junior counsel. Together they managed and led a number of experts and created a detailed overview of the children's medical interventions. It was, in the words of the trial judge, one of the most complex FII cases she had presided over. The children alone had been seen by over 20 treating doctors in many different hospitals and also in private consultations. Most challenging was the conduct and behaviour of the mother (and indeed father) which included dissembling and misleading presentations even within the trial window.

The second case was an application made within an unusual and lengthy case where the applicant advised an abducting mother across me very unusual circumstances. I was brought in at appellate level and was able to see and consider the applicant's written advocacy in resisting an application from the Court of Appeal.

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

I can confirm the information given is correct.

Approved Assessment - Evidence of the competencies

A. Understanding and using the law

The applicant is an exceptional lawyer who always has the most recent cases at her fingertips. I am able to speak to her knowledge and use of the law in abduction cases from the case of Case Name and more recently in the case currently before the court (where a recent argument in respect of cases on imminent risk of harm and separation of children from family was argued against separation).

B1. Written advocacy

The applicant within 'Case Name' crafted carefully constructed persuasive arguments in clear incisive documents. Her analysis of the law on abduction and recent authorities was detailed analytical and well honed.

In the earlier case, the applicant raised compelling arguments for the instruction of experts to assess the children relating her argument to the complex factual issues in the case. Her forensic overview of case material was reflected in focused written argument, tightly constructed and well framed.

The analysis of extensive medical information was pivotal the management of issues in this case and the applicant demonstrate an excellent ability to manage, distil and summarise this in a clear compelling note for the judge.

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

The applicant has a commanding style of oral advocacy, being balanced fair and using only the necessary language and words to promote the issue or argument being advanced. She is tenacious and persuasive. In Case Name managing a complex set of facts, nuanced issues about parenting skills and presentation the applicant was not undermining in her style, neither was she aggressive, rather she was firm, clear and attractive in tone. Her assured style reflected the confidence she had in her knowledge of the case papers and her mastery of the issues in the case.

C. Working with others

In a difficult, complex and challenging case it was particularly helpful to have a colleague such as the applicant to navigate the various twists and turns along the way. We often worked together to share the burden of distilling voluminous medical notes and to manage together a chronology of presentations. Together we constructed issues arising from various educational reports and created an overview for the judge of the mother's own medical records and presentations at hospital (which spanned a 30 year history). Together with her junior the applicant in a seemingly effortless way managed to maintain humour and support in what at times was an emotionally charged and fraught case.

In the recent case of M, there was a sudden and urgent application to separate the children from the carers. I was unable to attend court and needed to assist a colleague to take on the father's case (my junior neither being available). The applicant worked with me to assist my colleague and provided me (and her) with documents and shared thoughts on the application. It was the epitome of collegiate and collaborative working towards a common aim (keeping the children with family carers). The applicant took it upon herself to email me to let me know how the hearing had gone!

D. Diversity

I am aware that the applicant has engaged in diversity training. In court I have seen her adopt her style of advocacy and or communication to be mindful of the audience/clients. Recently in the M case she has shown skill, and care in her challenges of the local authority's approach to her client's history of mental health issues, challenging their biases (the local authority). That case involves, too, issues relating to the maternal grandparents; their being wealthy and any suggestion locally for them causing harm to their reputation (even

local police checks by outside authorities would raise suspicion. The applicant has developed arguments around these issues with insight and a calm measured way.

E. Integrity

Approved Assessment - Overall rating

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

Clearly ready for appointment

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

Whilst the applicant and I have only undertaken a handful of cases together, she is someone whom I know through conversation with colleagues is a well liked, respected and admired member of the profession. She is known as someone who is a fair and easy opponent to be against and a supportive and hard worker colleague in cases where issues can be the most complex and nuanced. She is an exceptional lawyer, a confident and natural advocate and a clear leader.

Approved Assessment - Views of others

If you have consulted others in preparing this assessment, please state who you have consulted, the nature and extent of their experience of the applicant and how far their experience coincides with or differs from your own.

Approved Assessment - Knowledge of the Applicant

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

No other cases.

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

The case was challenging. It involved allegations against the defendant of stalking his wife over a period of two years.

Initially the defendant sought to argue an abuse of process. That application was abandoned following an unsuccessful s.8 CPIA application pre-trial. During the trial the defence sought to argue a similar argument. The defence unsuccessfully sought to adduce accusations made against a number of others causing significant disclosure issues. The Crown compelled the defence to make a s.100 application which was abandoned by the defence following completion of the disclosure process.

From observations, the defendant appeared to be an extremely difficult client

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

Yes; it is correct.

Approved Assessment - Evidence of the competencies**A. Understanding and using the law**

The applicant showed a good understanding of the basic legal principles in play. His understanding of the relevant provisions of the Computer Misuse Act did at times appear muddled.

The abuse of process application was, from the outset, misconceived. He was wise to abandon it at the start of the trial. I was surprised that it was raised again in a different form during the trial. The consequent disclosure requests were unfocussed and wide-ranging, causing significant delay to the trial. When he advanced a new defence during the trial which had not been pleaded before in the defence statement I found the refusal to draft a further defence statement was tactically disadvantageous to his client. I do not know whether that refusal was client led.

As a result of raising a new defence we received repeated requests for disclosure of extremely sensitive information, with the barest of justifications. There was little appreciation of the bad character provisions of the Criminal Justice Act. Once forced to make a formal application it was clear that the few if any of the criteria were met. Ultimately the application was abandoned

B1. Written advocacy

Initially pre-trial I was impressed by the quality of the written advocacy, including the drafting of a section 8 CPIA application, and abuse of process argument. However during the trial we received a number of skeleton arguments that were prolix and repeatedly failed to address the issues in play. There was a tendency to draft pages of statutory provisions but little actual coherent argument. Throughout the trial we received repeated

disclosure requests that were far too wide often without any justification as to what the request was being made. On a number of occasions the response of the Crown was that the documents either failed to address the relevant criteria or needed further and better particularisation.

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

The applicant is plainly an experienced advocate. His closing speech was very good. He cross-examined the complainant twice (there being an aborted first trial). That cross-examination was robust but in my view overly aggressive and accusatory. There was excessive focus on previous sexual conduct of the complainant, solely for the purpose of attacking her credibility as opposed to being relevant any of the issues in the case. The witness was repeatedly reduced to tears unnecessarily so, in my view.

C. Working with others

It was clear the applicant had a difficult relationship with his lay client. There were several times during the trial when he indicated he may have to withdraw. On the whole I think he managed a difficult client well.

Following an initial aborted trial, new solicitors and a new junior were instructed.

The applicant worked well with him. We worked well with the junior but repeatedly found that agreements with the junior would then be changed once he had consulted with the applicant. In particular it was extremely difficult to finalise the agreed facts because of this.

During the trial the applicant's client was cross-examined for five days. The trial had overrun significantly and there applicant had another complex case (in which he was being led) in another courtroom in the building. I was surprised that for much of his own client's cross-examination he was in fact absent and attending the other case. Although his junior was very capable I do not think it was appropriate for the applicant to be absent for a number of days as opposed to hours.

D. Diversity

This was not case involving issues diversity and do I have no relevant evidence as to this competency.

E. Integrity

Approved Assessment - Overall rating

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

Not yet ready for appointment

Explanation of overall rating Please use this section to give a brief justification of your overall rating in Part 4. You may also use this section of the

form to give any additional information that will assist the Selection Panel.

I regret to say that I do not think the applicant is ready for appointment. In each of the competencies I have commented on there were significant shortcomings. Whilst I found him very personable, the quality of his legal argument, written submissions and oral advocacy was not of the standard required. Furthermore although I do accept in two counsel cases, it is often acceptable for leading counsel to be absent, particularly when cases overrun, the significant periods of absence were inappropriate. It should be borne in mind that his client was an experienced lawyer and a difficult client. Such extended absences seemed to me to be unwise.

Approved Assessment - Views of others

If you have consulted others in preparing this assessment, please state who you have consulted, the nature and extent of their experience of the applicant and how far their experience coincides with or differs from your own.

No.

Approved Assessment - Knowledge of the Applicant

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

No, the three cases referred to by the applicant are the only ones I have been involved in with him. In each case he has prosecuted and I have acted for one of the defendants.

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

X was a case of substance. It was multi-handed. The principal allegation was one of attempted murder. The case involved sensitivity, in view of the life-changing injuries inflicted upon the main victim. It was not especially legally complex, but did involve a multiplicity of issues in relation to the various defendants. It is perhaps of note that the court did not allocate a QC for the first defendant (who was accused of discharging the shotgun at the victim who suffered catastrophic injuries). This was on the basis that the issue in his case was very narrow - presence, but also in recognition that this was not a case of the highest bracket of seriousness or complexity. Therefore, this was not one of those cases of attempted murder where prosecuting counsel was against a silk(s).

Y was a prison riot case. Although it involved multiple (nine) defendants, it was not especially complex or difficult. The evidence was essentially CCTV from the prison and eye-witness accounts from prison staff.

Z was a conspiracy to steal. A four-handed case, but not one that was particularly complex or difficult.

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

Save for the comments I have made in 'Working with Others', the information given by the applicant about our contact in the cases he has listed is

accurate.

Approved Assessment - Evidence of the competencies

A. Understanding and using the law

Given his experience and the broad range of work he is instructed in, the applicant has a very good understanding of the law. He is able to apply the law effectively.

In X he successfully made bad character applications which enabled the jury to determine the full character of the accused, in circumstances where it was not inevitable that such applications would be successful.

At half-time in the trial, the very experienced judge withdrew the case against one of the defendants, setting out his reasons in an unimpeachable ruling. It was unquestionably the correct decision. The applicant did not share that view and sought an adjournment to consider this position and whether he should appeal this terminating ruling. The following day he returned to court and indicated he would not seek to appeal. Therefore, whilst it is correct to say that he demonstrated his knowledge of this procedure, the reality is that the mere fact that he even considered appealing against the ruling, calls into question his judgement and ability to objectively assess the strengths and weaknesses of his own case.

B1. Written advocacy

The applicant's written work is of a good standard. He has a very good eye for detail and is able to distil huge amounts of material into a digestible form.

In Y, his opening note to the jury set out precisely what the case was against each of the defendants, combining eye-witness and CCTV evidence, such that it was very clear how the case was going to be put.

In both X and Y he responded to multiple submissions of 'no case to answer' with detailed skeleton arguments which were concise and

well argued. These written arguments were supplemented by oral submissions, which were acceded to by the court.

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

I have witnessed the applicant engage in a variety of oral advocacy. This includes dealing with expert witnesses, who were presenting technical and complex material. I have observed him cross-examining defendants and defence witnesses as well as taking prosecution witnesses-in-chief.

In my assessment he is a careful and measured advocate. He is not one for extravagance, but is perfectly effective. This is arguably is the right balance for a prosecutor.

In X, he called a ballistics expert who was able to explain how the 'shot' from a shot-gun would disperse and how discharge into a victim's mouth would cause the sort of injuries that were present in this case. The applicant was able to break the technical aspects of this evidence into a more digestible form for the jury.

However, I have not observed him engaging in any oral advocacy which has left me with a feeling of having witnessed something outstanding, or which points to someone who is naturally destined for silk. In all of the trials we have done against each other, I cannot point to a specific example of oral excellence.

In X he cross-examined the principal defendant in a perfectly competent way and ultimately secured a conviction, but it must be borne in mind that that the defendant faced an overwhelming case. Therefore, this was not a case of stunning piece of advocacy tipping the case in favour of the prosecution. The applicant also called the principal victim via a video-link. He had the assistance of an intermediary. In fact, the oral advocacy involved in calling him was very limited, because his evidence-in-chief simply involved the playing of his ABE video which had been recorded by the police at the time of the incident.

The applicant has referred to how he dealt with a hostile witness in this trial. This witness refused to give evidence that advanced the prosecution case and so the applicant sought, and was given, leave to cross-examine him. This was a necessary step, but ultimately the jury were not prepared to accept this witness's evidence as a whole and acquitted three defendants as a consequence.

In Y, only two out of nine defendants gave evidence. All of the defendants were serving prisoners, criminally sophisticated and streetwise. In cross-examining them, the applicant failed to deal with them effectively. He allowed himself to get drawn into arguments with the defendants, who in turn used the witness box as platform to make comments about their situation, their treatment in prison and how the prosecution case was motivated by a desire to ensure that somebody was brought to book for the disturbances that had caused millions of pounds worth of damage to the prison. In my judgement, the applicant's inability to undertake effective cross-examinations of these men, was in no small measure down to his lack of understanding or empathy to their position and reflected his view that they were all guilty men, who were wasting court time.

C. Working with others

The applicant has prosecuted each of the three trials we have done together. In each of those trials, the defence community has included a variety of advocates, none of whom I would describe as particularly difficult or abrasive. Notwithstanding that, in two of those trials the applicant has struggled to maintain a productive and effective working relationship, with the defence community. In my view, that is partly down to his entirely partisan approach to prosecuting, in which he perceives the defence as a "the enemy" and largely fails to recognise the weaknesses in his own case, thereby influencing his approach to proceedings.

In Y, the applicant effectively stopped engaging with the defence Bar, from about two weeks into the trial. My sense was that he believed the defence were "ganging up" on him. In fact, the defence were simply keen to ensure that the proceedings against defendants - all of whom were serving prisoners and hugely unattractive characters - were fair and that the prosecution approach was balanced. The applicant's failure to engage and unwillingness to discuss aspects of the case, meant that the trial became very difficult. The atmosphere between the parties was very tense and unproductive. His junior was left to deal with all enquiries the defence had and the applicant effectively cut off all communication. This was very disappointing in a senior member of the Bar and was not what one would expect to see from a leader or someone aspiring to be a QC. His refusal to recognise weaknesses in his case was demonstrated by his rigid insistence on pursuing defendants against whom the evidence had been shown to be woefully weak. Had he been brave enough to "take a view" and withdraw the case against of the defendants; he would have appeared as a reasonable, fair-minded and just prosecutor in the eyes of the jury.

In the event, eight out of the nine defendants were acquitted in this trial, which was completely unexpected given the strengths of the evidence. I have little doubt that this was in no small part due to the approach of the applicant. His cross-examination of the defendants who gave evidence

lacked courtesy and reflected his view that they were all very guilty and were wasting the court's time. In my assessment, the jury did not appreciate this judgmental approach and delivered verdicts designed to send a message to the prosecution that the whole case had been "over prosecuted".

Sadly, this experience was largely repeated in X. Again, the applicant reacted very badly to his case being closely scrutinised and elements of it being taken apart by the defence before the jury. In my client's case the issue was one of identification. The prosecution relied upon a facial-mapping expert. I was able to neutralise her evidence through cross-examination, such that it had little value. The applicant's reaction was to stop engaging with me and others. Again, it seemed to me that he was unnecessarily sensitive to criticism of his case. He was also too protective of his case. Again, his junior was left as the only available face of the prosecution.

I note that, when referring to me, the applicant describes in his 'Case Information': "He also has experience of working with me and my junior out of court in shortening the trial process by producing a plethora of admissions for the jury." I am afraid that this is not my recollection of this case. As set out above, his junior was left to act as an intermediary between the applicant and defence counsel. There was little, if any, interaction with the defence.

D. Diversity

In Y, the applicant cross-examined a Muslim defendant about the fact that he had thrown items (kitchen pots) out of a kitchen window in the middle of the prison riot. The very savvy defendant responded that he would not handle these items, because they were for use by the mainstream population, where as he as a devout Muslim would only handle the kitchen pots that had specifically been marked as "Halal". Thereafter, the applicant proceeded into a line of cross-examination on this topic, which demonstrated that he had little or no understanding of this issue or the sensitivity about handling, or being made to handle something which was not "Halal". This was very unfortunate and allowed the defendant to make some mileage out of what appeared to be an insensitive and "out of touch" prosecution who was indifferent to his religious and cultural sensitivities.

E. Integrity**Approved Assessment - Overall rating**

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

Not yet ready for appointment

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

In my judgement, the applicant is a very experienced, competent and able junior. He is instructed in a wide variety of work, usually by the prosecuting authorities. He is plainly diligent and very hard-working. He is able to handle big cases, in the sense of knowing the evidence intimately.

However, in my experience of him, which has involved three trials, two of which were each in excess of six weeks in duration, he has not shown the overall package of qualities required to justify appointment as QC. In fact, as set out herein, he has shown elements which would suggest he does not presently have the required qualities.

Approved Assessment - Views of others

If you have consulted others in preparing this assessment, please state who you have consulted, the nature and extent of their experience of the applicant and how far their experience coincides with or differs from your own.

The views expressed in this assessment are entirely my own. I have not discussed or consulted with anybody else.