

Summary of Revised Process for KC Award for England and Wales

(approved by the Professions 23 November 2006, and modified January 2014, February 2019 and September 2020, and updated June 2023)

This paper summarises the revised process for the selection and appointment of King's Counsel in England and Wales. The scheme was developed by the Bar Council and the Law Society, with support from the then Department for Constitutional Affairs, and revised in the light of the experience of the 2005-06 competition. Further modifications were made in January 2104, February 2019 and September 2020.

The scheme is based upon a revised set of competencies including, by way of example, the behaviours required of leading advocates. Apart from regulatory checks described in Paragraph 3, evidence will only be gathered and assessed against the competencies and only from those who have seen the applicant 'in action'.

Combined with the revised competency framework, the revised process serves the public interest by offering a fair and transparent means of identifying excellence in advocacy in the higher courts.

The scheme:

- (1) places the competencies required of an advocate at the heart of the scheme;
- (2) places selection in the hands of an independent selection panel;
- (3) includes appreciable "lay" (non-lawyer) membership and judicial membership on the selection panel;
- (4) includes a modern "self-assessment" in relation to the competencies and ensures that the "self-assessment" is taken into account at the stage of decision;
- (5) contains no element of "automatic consultation" or "secret soundings";
- (6) addresses the problem of "visibility" by focusing the selection of references towards only those who have personally seen the applicant;

- (7) takes references (described as assessments) from judges, practitioners, and professional clients, clients or client proxies;
- (8) includes a face to face interview of the applicant, conducted by members of the Selection Panel;
- (9) provides for the publication of information about the broad fields of law in which the applicant has demonstrated excellence as an advocate at the time of appointment;
- (10) provides arrangements for feedback to unsuccessful applicants, and for a complaints procedure; and
- (11) is wholly self-financing.

Bar Council of England and Wales



The Bar Council

Law Society of England and Wales



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1 **Infrastructure, including Secretariat**

1.1 The scheme will be administered by its own Secretariat, independently of the Government, the Bar Council and the Law Society.

2 **Application form, with self-assessment**

2.1 Applicants will be required to complete an application form, to include a "self-assessment", allowing the applicant to provide his or her own evidence against published competencies. The form will also require applicants to disclose criminal convictions or findings of professional misconduct. The Selection Panel takes the view that under the Rehabilitation of Offenders Act 1974 an applicant need not disclose a spent conviction and the Panel will not take a spent conviction into account when considering an applicant.

2.2 Those who anticipate applying in the future will be encouraged to make contemporaneous notes about their work in order to help them complete the self-assessment when the time came for their applications to be made.

3 **Initial Filter**

3.1 There will be no initial filter. Assessments will be sought on all applicants.

4 **Professional Conduct Checks**

4.1 The list of applicants will go, confidentially, to the senior member of staff with responsibility for professional conduct at each of the professional bodies.

4.2 This will be to ensure any findings, or pending complaints, of misconduct are identified.

- 4.3 Where a finding or complaint had not been identified or addressed by the applicant in the application form, the applicant will be given an opportunity to address in writing (a) any question of non-disclosure by the applicant of the finding or complaint and (b) the materiality of the finding or complaint to the applicant's application.
- 4.4 Guidance has been prepared by the Selection Panel about the extent to which previous criminal convictions or findings of professional misconduct should be taken into account in assessing an applicant's suitability.
- 4.5 The list of applicants will go to the following judges: the Lord Chief Justice, the Master of the Rolls, the Senior Presiding Judge for England & Wales, President of the King's Bench Division, the Chancellor of the High Court and the President of the Family Division, and the Presidents of the Upper Tribunal.
- 4.6 Where one of those judges has reason to believe that an issue concerning integrity as it related to the competency framework was known to another judge, they will be entitled to invite the Selection Panel to seek comments from the judge concerned.
- 4.7 Where comments are sought from the judge concerned, the comments will be directed at the integrity element of the competency framework. Concerns will have to be fully particularised.
- 4.8 Concerns about integrity identified in this way will be put to the applicant concerned, so that the applicant has an opportunity to provide an explanation to the Selection Panel on the matter.
- 4.9 It will be for the Selection Panel to decide what weight to give to the comments made by the judge, taking into account the applicant's explanation and the rest of the information available to the Selection Panel.

5. **Listing of cases**

5.1 Applicants will be expected to list 12 cases of substance, complexity or particular difficulty or sensitivity in which they have been engaged as advocate over the previous three years. Where an applicant is unable to list 12 such cases over the previous three years, he or she may list cases from earlier.

6 **Assessments from judges and arbitrators**

6.1 Four assessments will be taken in writing.

6.2 Applicants will be required where possible to list a judge or arbitrator from each of their listed cases.

6.3 Applicants will be asked to nominate two judges from those listed, numbering them in order of preference. The applicant's first choice will be asked to give a confidential written assessment. If the applicant's first choice of nominated judge is unable to provide an assessment, then the applicant's second choice will be invited to do so instead.

6.4 The Selection Panel will select a further three judges or arbitrators from the list (in addition to the first nominated judge) for confidential written assessments. The selection will be made to provide a range of types of exposure and having regard to the ability of the judge to be able to address with authority the applicant's demonstration of the competencies. The selection will normally include (i) (where applicable) a senior judge with experience of the applicant's specialism(s) and (ii) the judge (or arbitrator) before whom the applicant had appeared most frequently, except where those judges do not appear to have had sufficient exposure to the applicant to address the applicant's demonstration of the competencies.

6.5 To assist their contribution, the judges or arbitrators selected will be given information provided by the applicant about the name and date of the

case(s) in which they appeared before the assessor, and the brief account given by the applicant of his/her degree of exposure to the assessor.

7 Assessments from Fellow Advocates

- 7.1 Three assessments will be taken in writing.
- 7.2 Applicants will be required to identify a practitioner against whom they have appeared or by whom they have been led (or, if applicable, whom they have led) , in each of their listed cases..
- 7.3 Applicants will be asked to nominate two practitioners from those listed, numbering them in order of preference. The applicant's first choice will be asked to give a confidential written assessment. If the applicant's first choice of nominated practitioner is unable to provide an assessment, then the applicant's second choice will be asked to do so instead.
- 7.4 The Selection Panel will select a further two from those identified by the applicant (in addition to the first nominated practitioner) for confidential written assessments. The selection will be made to provide a range of types of exposure and having regard to the ability of the practitioner to able to address with authority the applicant's demonstration of the competencies.
- 7.5 To assist their contribution, the practitioners selected will be given information provided by the applicant about the name and date of the case(s) in which they appeared, and the brief account given by the applicant of his/her degree of exposure to the assessor.

8 Assessments from professional clients and clients (or client proxies)

- 8.1 Two assessments will be taken in writing.

- 8.2 Applicants will be required to identify at least six individuals who have been (in their own right or on behalf of their firm or employer) professional clients, clients or client proxies, in one of their 12 listed cases
- 8.3 Applicants will be asked to nominate two individuals from those listed, numbering them in order of preference. The applicant's first choice will be asked to give a confidential written assessment. If the applicant's first choice of nominated client assessor is unable to provide an assessment, then the applicant's second choice will be asked to do so instead.
- 8.4 The Selection Panel will select another person (apart from the first nominated client assessor) from those6 identified by the applicant, for a confidential written assessment. The selection will be made to provide a range of types of exposure and having regard to the ability of the prospective assessor to address with authority the applicant's demonstration of the competencies.

9 Consideration of assessments

- 9.1 Before any decision to interview, it will be open to the Selection Panel members (or senior members of the Secretariat under their direction) to approach assessors where on the face of it the assessment appears to be lacking in evidence.

10 **Decision making by the Selection Panel**

- 10.1 Each application, with the self-assessment and all assessments, will be read by two Selection Panel members (one lay; one professional) in preparation for interview. Any application which appears to the Panel members on the information available not to demonstrate the competencies sufficiently to make them at that stage a credible candidate for appointment in the instant year may be put to the full Selection Panel for a decision to treat the application as unsuccessful.
- 10.2 The full Selection Panel will then conduct a review of these decisions, including collective moderation of any borderline cases.
- 10.3 All applicants whose application is not to be treated as unsuccessful at this stage will be interviewed by two members of the Selection Panel (one lay and one professional). The interview will be directed at the competencies with a view to adducing further evidence as to their demonstration by the applicant, and resolving any questions over the application.
- 10.4 Following interview, those Selection Panel members will grade the applicant.
- 10.5 The full Selection Panel will then conduct a review of these initial grades. There will then be collective moderation, scrutiny of borderline cases, and the list of successful applicants will be finalised. It will not be open to the Selection Panel to call any applicant for further interview.
- 10.6 Written feedback comments will be prepared for each unsuccessful applicant.

11 **Composition of the Selection Panel**

- 11.1 The Selection Panel will be independent, will act in the service of the public interest, will include “lay” (non-lawyer) membership and must command respect.
- 11.2 The Selection Panel will consist of a minimum of nine members, including one or two retired or serving senior judges, senior lawyers, (among whom there should be both barristers and solicitors), and distinguished lay people. There should be at least as many lay people as lawyers (excluding any judicial members).
- 11.3 The Selection Panel will be chaired by a distinguished lay person.
- 11.4 Members of the Selection Panel will be remunerated at a rate that reflects the importance and seniority of their positions.
- 11.5 Decisions of the Selection Panel will be valid notwithstanding any vacancy or the absence of a Panel member from a meeting or meetings.
- 11.6 The appointments to the Selection Panel will be made as follows:
- (a) the chair, initially by joint nomination of the Chair of the Bar and the President of the Law Society;
 - (b) the other lay members, by open competition;
 - (c) the judicial, barrister and solicitor members, by nomination by the Chair of the Bar (for the barrister members), the President of the Law Society (for the solicitor members), and the Chair of the Bar and the President of the Law Society jointly (for the judicial member(s)).

11.7 Each open competition for the members of the Selection Panel will be conducted by an appointment panel. The appointment panel will comprise three members, two nominated respectively by the Chair of the Bar and the President of the Law Society, the third being nominated by the other two members.

11.8 The Selection Panel will also have the responsibility of reviewing cases where cause was shown why an individual appointed to the rank KC under this scheme should lose the designation, and advising the Lord Chancellor on the matter.

12 **The Lord Chancellor and The King**

12.1 The final list of successful applicants will go to the Lord Chancellor and thence to the King for the issue of letters patent.

12.2 The question of the appointment of KC "honoris causa" will be a matter for the Lord Chancellor and is not part of this process.

13 **Appointment ceremony**

13.1 The appointment will be conferred at a ceremony presided over by the Lord Chancellor.

14 **Publication of information about areas of law**

14.1 The announcement of the award should be accompanied by the publication of information about the broad fields of law in which the applicant has demonstrated excellence as an advocate at the time of appointment, being one or more of criminal, family and civil law.

14.2 This is not intended to restrict the fields of law in which the applicant appointed as KC may practice, the title being simply “KC”.

15 **Feedback**

15.1 All applicants will be notified of the outcome of their application before the conclusion of the competition. Where an application is unsuccessful, feedback will be provided.

15.2 The feedback will be designed to assist focus on improvement, by identifying the areas in which the applicant needed to demonstrate more evidence, or to improve his/her standard further.

16 **Complaints**

16.1 Concerns or complaints about the operation of the system will be addressed by a complaints committee comprising a senior judge (nominated by the Lord Chief Justice), a lay person (appointed through public competition), a senior barrister (nominated by the Chair of the Bar) and a senior solicitor (nominated by the President of the Law Society).

16.2 In the event that the complaints committee upholds a complaint by an unsuccessful applicant, that will not mean that the candidate will automatically receive the award; instead the question whether the award should be made will be referred back to the Selection Panel for decision in light of the findings of the complaints committee.

17 **Cost and fee**

17.1 The process will be self-financing.

17.2 A fee will be charged on application.

17.3 A further fee will be charged on appointment (over and above the fee necessary to cover the cost of the letters patent and appointment ceremony).