



CONSULTATION ON CHANGES TO THE QC APPOINTMENT PROCESS

Response: October 2020

A response from the Bar Association for Commerce Finance and Industry

INTRODUCTION

Founded in 1965, the Bar Association for Commerce, Finance and Industry (“BACFI”) represents the interests of employed barristers working in commerce, finance and industry. BACFI’s members include barristers employed in commercial organisations and law firms, employed by the government legal services, and those working through their own consultancy practices.

BACFI is keen to play its part as a representative organisation in helping shape the development of the Bar of England and Wales, by bringing forward the views of its members. BACFI actively supports the objective of an independent and high-quality bar, accessible to all.

GENERAL REMARKS

BACFI is grateful to the QC Appointments Scheme for providing another opportunity for comment on QC Appointments and looks forward to engaging further with the QC Appointments Scheme in the future.

As mentioned above, BACFI represents the interests of barristers employed in commerce, finance and industry. As we outlined in the response to your 2018 consultation, such Employed Barristers undertake a multitude of very complex legal roles in a wide range of settings. They have not only undertaken the same training as self-employed barristers, many will also have worked in chambers and appeared in front of judges, and many will have exceptional oral and written advocacy skills, which arise not solely from the courtroom or tribunal setting. These skills often arise from advocacy in front of General Counsel, or Boards, or regulators or prosecutors. These skills are every bit as worthy of recognition as Queens Counsel.

The current model which awards QC for excellence in oral or written advocacy, needs to explicitly either

- adopt a wide definition of “advocacy” in order not to discriminate against the Employed Bar and in order to positively encourage a more diverse range of applicants from outside of the self-employed, chambers context, or
- remove the stress on advocacy, and replace this with evidence of legal excellence.

At the Employed Bar the core specialist skills being assessed in the QCA application are also being used. These skills, however, are used and evidenced in different ways at the Employed Bar. For example the role of a General Counsel (oral advocacy to CEO & Board) and Employed Barrister in solicitor’s firm (supporting appeal to regulator) will use written and oral advocacy, however these will be more difficult to evidence than a court or tribunal hearing. Therefore we feel that of the two options above, there should be less stress on oral advocacy and appointments should be made on excellence in law alone.

We also feel that the number of judicial referees should be less than 12 and that the type of assessor needs widening from just judges or tribunal heads or adjudicators, to encompass other decision makers such as Boards, General Counsel, regulators, prosecution agencies, to enable barristers at the Employed Bar to apply.

There should be less emphasis on “opponents” and “practitioners” in cases as employed barristers may have less, or no, court room experience than those self-employed but they should nevertheless also be asked to include the name of the employed barrister’s “opposition”, thus for example, lawyers from the “other side” such as prosecutors, regulators’ in-house lawyers, or other corporate lawyers.

1. IS IT AGREED THAT A SEPARATE SUB-COMPETENCY COVERING ‘COMMANDS CONFIDENCE’ SHOULD BE ESTABLISHED?

Yes, BACFI agrees with this initiative.

2. DO CONSULTEES HAVE ANY COMMENT ON THE DEFINITION AND EXAMPLES OF SUCH A SUB-COMPETENCY AS SET UP IN PARAGRAPH 2

Yes, these seem sensible.

3. DO CONSULTEES CONSIDER THAT THE PRESENT ARRANGEMENTS ARE SUFFICIENT TO ENSURE THAT THE SELECTION PANEL HAS ALL RELEVANT EVIDENCE ON THIS SUB-COMPETENCY BEFORE IT?

If those responding were to take the opportunity to respond on these issues, then yes, the selection panel would have likely have sufficient information.

4. DO CONSULTEES CONSIDER IT APPROPRIATE TO EXTEND THE EXISTING PROVISION FOR CONSULTING THE SENIOR JUDGES ON “INTEGRITY” TO COVER THE NEW “COMMANDS CONFIDENCE” SUB-COMPETENCY?

Yes, however care needs to be taken to ensure that any comments are evidence based, and that they are disclosed to applicants in an open and transparent manner, and that the use which is made of these comments is also open and transparent.

5. WHERE AN ASSESSOR PROVIDES ADDITIONAL INFORMATION FOLLOWING CONSULTATION WITH COLLEAGUES, SHOULD THAT SIMPLY BE RECORDED IN THE JUDGE’S ASSESSMENT OR SHOULD THERE BE A PROCESS WHERE THE SELECTION PANEL SEEKS EVIDENCE DIRECTLY FROM THE SOURCE OF THE INFORMATION?

Any additional information provided by an Assessor following “consultation” with colleagues must be investigated further and also needs to be disclosed to the applicants for comment. Failure to do so will simply lead to a return to “informal soundings”.

FURTHER CONSULTATION AND CONTINUED ENGAGEMENT

BACFI is grateful to the QC Appointments Scheme for providing a further opportunity for comment on these areas and looks forward to engaging further with the QC Appointments Scheme in the future.

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