



QC APPOINTMENT SCHEME

Response: July 2018

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 an opportunity for comment on these consultations 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. 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 Council.

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

The type of assessor listed under the current model also needs widening - from just judges or tribunal heads or adjudicators - to encompass other decision makers such as Boards, General Counsel, regulators, prosecution agencies. Again such explicit changes need to be made 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.

The QCA is respectfully asked to consider the wide criteria used for QC appointments in Nova Scotia, Canada:

“The criteria for appointment include professional integrity and good character, as well as outstanding contributions to the practice of law through recognition by other members of the profession as an exceptional barrister or solicitor, exceptional contributions through legal scholarship, teaching or continuing legal education, demonstration of exceptional qualities of leadership in the profession, or engaging in activities of a public or charitable nature in such a way as to raise the esteem in which the legal profession is held by the public. The Committee is also asked to consider regional, gender and minority representation among the persons recommended for appointment.”

1. CHARACTER, CONDUCT AND INTEGRITY

a) The extent to which unsatisfactory behaviour outside the field of advocacy which attracted neither criminal nor regulatory sanction should be taken into account in considering applications for Queen's Counsel;

b) How such behaviour should be defined, and what additional guidance might be needed

c) The way in which the Selection Panel should seek to gain information about any such matters.

BACFI believe that it is important to recognise "conduct" more generally than just criminal and regulatory sanctions. However, any mechanism for collecting such information would be open to (1) inconsistency in collection and application and (2) abuse/prejudice. We understand and agree with the QCA's analysis and feel the complexity and inconsistency risks undermining the benefit.

d) The professional bodies have not at this stage explored with the Crown Office whether it would be possible to make arrangements under which the QC designation could be revoked more readily, but they would be grateful for views on whether or not it is desirable in principle to make such a change.

2. LISTING OF CASES AND ASSESSORS

a) Should applicants be asked to list cases over the last two years, the last three years, or some other period? Or should there be no prescribed period?

BACFI's view is that the time period should be longer; 5-10 years

b) Should different numbers of cases be expected of practitioners in different specialisms?

It is agreed that asking for different numbers of cases from applicants with different specialisms is likely to cause difficulties for those with a mixed practice as long as the Employed Bar are given leeway to list fewer cases. 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. Maybe a simple hypothetical example demonstrating 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. Therefore the data flow MUST be read in conjunction with this knowledge.

c) What should be the maximum number of cases sought?

The professional bodies suggest that applicants should be asked to list up to 20 cases. BACFI's view is that the number should be capped but specific leeway should be allowed for the Employed Bar who may not be allowed to list all instructions for confidentiality reasons.

d) Should all judges need to be listed when a case went through several levels of the court system?

The principle underlying the proposed change suggests that applicants should list judges from each major stage (e.g. trial and appeal), but not those who dealt with procedural hearings of no great substance. As above, 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. The need to include the employed barrister's "opposition" should also be added. So lawyers from the "other side" - where relevant; e.g. regulators' in-house lawyers.

e) **Should all practitioners be listed in a multi-handed trial?**

As has been mentioned above, employed barristers who may have less court room experience, 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.

FURTHER CONSULTATION AND CONTINUED ENGAGEMENT

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

Bar Association for Commerce Finance and Industry

July 2018