QC Appointment Scheme – Listing of cases and Assessors

Introduction

1. This paper is issued by QCA, on behalf of the Bar Council and the Law Society. The paper suggests a significant change affecting the current process for QC appointments. A note of the background to the present scheme is at Annex A. A brief description of QC schemes in some other jurisdictions is at Annex B.

Summary

2. The professional bodies propose that, in place of the current system under which applicant are asked to list the 12 most important cases they have dealt with in the past three years (and to list eight judicial, six practitioner and four client assessors who can comment on their performance in those cases), applicants should in future be asked to list **all** their significant cases over a particular period and to list all the judges, fellow practitioners and clients in those cases.

The Current Scheme

3. The present process for QC appointments was agreed between the Bar Council and the Law Society in 2004 and the first competition under the present arrangements was launched in 2005. The scheme was intended to overcome the perceived shortcomings of the previous scheme, and in particular to ensure that all higher courts advocates, whatever their gender, ethnicity or professional background, had a fair chance of appointment based entirely on merit.

4. The key features of the present process are that:
   - all applicants are assessed against a competency framework, which sets out the various competencies which together define what is required of an advocate in the higher courts.
   - the assessment of applicants is made on the basis of evidence about their performance in cases of substance in the higher courts of England and Wales (or equivalent forums) derived from their self-assessment, from assessments by judicial, practitioner and client assessors and (for those not eliminated following consideration of the assessments obtained about them) from an interview.
   - with the exception of information concerning integrity (on which checks are made via the senior judiciary and the professional regulators) no information from sources external to those assessments and interviews is taken into account.
   - all decisions on the recommendation or non-recommendation of applicants (and on invitation to interview) are made by an independent Selection Panel containing equal numbers of lay persons and lawyers.

5. Although the scheme is described as identifying excellence in cases of substance in the higher courts of England and Wales (and only advocates with rights of audience in the higher courts are eligible to apply), it is in fact available to those acting as advocate in cases of substance wherever they may be adjudicated. The scheme always encompassed planning advocates, most of whose work characteristically takes place before planning inquiries. In recent years, there has been an increasing number of applications from advocates whose work is primarily in tribunals, or in arbitrations rather than in courts.

6. The designers of the new scheme were determined to do all they could to ensure not only that the appointment system worked in such a way as to maximise diversity of appointments, but also to ensure that all those appointed under the new system had a good understanding of diversity issues as they affect the legal profession. This is currently reflected in a specific “diversity” competency, which requires applicants not only

to show a good understanding of diversity, but also to demonstrate some proactive work to improve diversity. The professional bodies are committed to retaining that approach.

Assessment of the Current Position

7. Although challenges remain, there has been considerable success over the period the new scheme has been in operation in making appointments more diverse. Between the last year of the old scheme and the most recent year of the new scheme, the proportion of women applicants rose from 10% to 18% and the proportion of women amongst those appointed rose from 7% to 27%. The proportion of BAME applicants rose from 6% to 12%, and the proportion of BAME advocates amongst those appointed rose from 6% to 15%. The number of solicitor applicants remained 10, but the number appointed rose from one to five.

8. Nevertheless those figures show that the proportion of women appointed (which has never exceeded 27%) remains below the proportion of women in the realistic pool for appointment. The best guide to the proportion of women in the realistic pool is the proportion of women barristers in self-employed practice of between 15 and 25 years' call. The best estimate is that [just over 30%] of that cohort are women. Furthermore, although the figures for appointment of BAME applicants overall are satisfactory, at 15% compared with [around 12%] in the realistic pool for appointment, that disguises sharp differences between different ethnic groups. Although caution needs to be exercised because of comparatively small numbers, it appears that whilst advocates from Asian backgrounds do comparatively well, advocates from African or Caribbean backgrounds do not.

9. The professional bodies remain fully committed to the objective of making appointment to QC genuinely available on equal terms to all higher courts advocates, irrespective of their gender, race, other protected characteristic, or professional background. They have made changes from time to time to ensure that any avoidable barriers to potential applicants are removed, particularly so far as women are concerned, and the professional bodies and the Selection Panel are in the course of implementing a number of recommendations from research which QCA commissioned last year about under-application by women applicants.

10. In the professional bodies' view, the current appointment system is fundamentally sound, and the challenge is thus to develop it in order that the progress made in recent years can continue, rather than to reshape it radically. The professional bodies were pleased to note the comments of the Lord Chancellor at the most recent declaration ceremony for newly appointed QCs;-

11. "The title of Queen's Counsel is a mark of excellence, not just in this country but around the world, where it plays an important role in supporting the attractiveness of English and Welsh legal services more broadly. …it recognises the depth of expertise and eminence [those appointed] have in [their] particular field of law. It is also a mark of distinction in the art of advocacy, in developing and advancing a client's case and getting the best outcome for them…the process for becoming Queen's Counsel is a robust and rigorous one, based on competence and merit."

Identifying Excellence

12. As well as removing any avoidable barriers to applications from particular groups, it is essential that the arrangements for recommendations for appointment as QC are effective, in the sense of providing the best possible evidence for the Selection Panel's recommendations. Any shortcomings in that regard are likely to lead to some applicants who should be appointed not being recommended, and to some who do not merit appointment being recommended. The former problem is obviously unfair to the individual concerned, although that is to a small degree mitigated by the fact that it is possible to remedy the apparent error in a subsequent year, if the applicant concerned should reapply. However, ill-founded recommendations for appointment can never be corrected. Although no scheme can ever be perfect, if there were to be more than a handful of ill-founded appointments, the reputation of the QC scheme, and hence its value both domestically and internationally, would be impaired. Furthermore, such appointments may damage the livelihood of the apparent beneficiaries, as they may find

it very hard to attract instructions as QC. There is no reason to suppose that at present any more than a very small minority of recommendations (or decisions not to recommend) are ill-founded. But it is important that the professional bodies should do all they can to design arrangements in which the risk of that happening is minimised.

The Approach to Gathering Evidence

13. At present, leaving aside questions of integrity, character and conduct, evidence is gathered about applicants in three ways:
    - Through a detailed self-assessment, in which applicants explain why they consider they meet each of the competencies to a standard of excellence; list the 12 most significant cases in which they have been engaged over the previous three years; and list at least eight judicial, six practitioner and at least four client assessors who have seen them in those cases.
    - Through detailed written assessments provided by four judicial, three practitioner and two professional client assessors drawn from the list provided by the applicant. Apart from one assessor in each category who is specifically nominated by the applicant, the assessors are selected by QCA staff from amongst those listed by the applicant, in accordance with guidance laid down by the Selection Panel. The objective is to select assessors who will between them provide the best possible evidence about the extent to which the applicant satisfies the competencies.
    - (For those invited to interview following consideration by the Selection Panel of the evidence from assessors) through an interview with two members of the Selection Panel, designed to test the evidence obtained through the assessments and to fill in any gaps.

Effectiveness of the Present Approach

14. The present approach to gathering evidence was designed specifically to overcome the problems identified with the old system, in which decisions were thought too frequently to be taken on the basis of second-hand, anecdotal or inadequately evidenced information about applicants, rather than on solid first-hand evidence. There is no place in the current scheme for informal consultations with senior judges or the leaders of the profession, and it is made clear to assessors that the Selection Panel needs evidence of the extent to which applicants satisfy the competencies, rather than just assertions of opinion. Furthermore, in order to ensure fairness to applicants, it is the Selection Panel's policy that the view of a single assessor, however eminent, is never automatically determinative of an application. This policy thus avoids any effective veto by senior judges of individual applications, which was widely considered to be a feature of the former system.

15. However, in its determination to overcome the problems of the past, there is an argument for saying that the appointment scheme now gives applicants too great a control over the evidence available. Applicants are able to avoid listing any case in which they feel they may have under-performed, and even where they do list a case, there is no obligation on them to list an assessor from it.

16. This problem is exacerbated by the practice which has developed for many applicants to contact assessors in advance to ask if they would be willing to provide an assessment, despite the fact that it is made clear in the Guidance for Applicants that there is no need to do so. Applicants naturally interpret any hesitation on the part of the prospective assessor, even if it takes the form of uncertainty as to how well they are able to remember the case, as being an indication that the individual concerned is unlikely to provide a very supportive assessor, and thus as a hint not to list that prospective assessor.

17. The consequence of that is that instead of providing a rounded picture of the quality of their work, applicants are sometimes able to ensure that a less-well balanced picture is available to the Selection Panel, through effectively cherry-picking the assessors from whom evidence is sought. In 2017, almost 90% of assessments (including 83% of judicial assessments) describe applicants as "Very Good" or "Excellent", both of which are intended to indicate suitability for appointment despite the fact that each year only around 45% of applicants are successful. There is no reason to suppose that that

disparity results from the Selection Panel taking an unduly stringent approach - surveys suggest that more assessors think too many applicants are appointed than too few. Whilst the interview which forms part of the process can identify some instances where an applicant appears to have received unjustifiably glowing assessments, it is not realistic to think that a 40 minute interview can do that unfailingly.

18. The difficulty with the current approach is thus that it enables applicants to exclude cases in which they have not performed as well as they would have wished, and to ensure that any potential assessors who have witnessed such sub-par performances do not give an assessment, simply because the applicant does not list them on their application form. Although that approach may be in the interests of the individual applicant, it is difficult to see that it contributes to making the best possible decisions on all applicants.

19. The current process may also have an undesirable side effect from the diversity perspective. The evidence from QCA's research is that women tend to be more reluctant than men to approach assessors, particularly judicial assessors, to ask if they are willing to provide an assessment. The consequence is that, in general, women may be less adept than men at avoiding potentially unsupportive assessments. The present approach may thus **both** increase the risk of inappropriate recommendations for appointment, by causing the assessments on some applicants to be undeservedly favourable, **and** indirectly discriminate against women, as women are less likely to take the opportunity to screen assessors in this way.

Avoiding Cherry Picking

20. An alternative approach might be to ask applicants to list all cases of substance they have undertaken within a defined period, or all up to a prescribed maximum number. Applicants would be asked to list the judges and fellow practitioners involved in each, and their client. The advantage of an approach on these lines would be that it would retain the important feature of ensuring that decisions were based only on first-hand evidence about each applicant, whilst restricting the ability of applicants to ensure that unfavourable evidence was not available to the Selection Panel.

21. The agreed process currently requires applicants to show excellence in cases of "substance, complexity, or particular difficulty or sensitivity", generally referred to simply as "substantial cases". The Guidance to Applicants spells out what is meant by that. The professional bodies do not at present plan to change the definition, except to say that if applicants would otherwise be short of sufficient evidence of oral advocacy, they should list any cases in which they undertook any significant advocacy, even if the case concerned would not otherwise be regarded as a case of substance.

22. It would be perfectly possible within such a scheme to retain the current provision which enables applicants to nominate one assessor in each category from whom the Selection Panel guarantees to seek an assessment. However, the other potential assessors would be drawn from all those who had seen the applicant in a substantial case, rather than from the more restricted number listed by applicants under the current process. It is of course possible that some applicants would nevertheless omit a case in which they had produced a sub-par performance. However, that would be a risky approach for applicants to take if (as it might well) it came to light that an applicant had failed to list a case in which they had appeared. In the absence of a convincing explanation, such an omission could be expected to be fatal to an application. It may be that the regulatory bodies would also consider a deliberately misleading application to be a matter of professional conduct.

23. There are naturally a number of practical ancillary issues which would need to be settled before introducing an approach on these lines. They include:
    - 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?
    - Should different numbers of cases be expected of practitioners in different specialisms?
    - What should be the maximum number of cases sought?

- Should all judges need to be listed when a case went through several levels of the court system?
- Should all practitioners be listed in a multi-handed trial?

24. The professional bodies' provisional views on these issues are:
    - applicants should be asked to list cases over the previous there years, as at present. The risk of that leading to an unmanageably large number of cases can be dealt with by setting a maximum number of cases to be listed. It should however continue to be possible for applicants to go back beyond three years if they would otherwise be short of cases whether because of career break (or part time working), or because of the nature of their practice.
    - Although there is an argument for asking applicants from different specialisms to list different numbers of cases – as a generalisation, applicants specialising in criminal law are likely to appear in considerably more cases than those with a Chancery practice – applicants do not all fall neatly into one category or another, and asking for different numbers of cases from applicants with different specialisms is likely to cause difficulties for those with a mixed practice.
    - The professional bodies suggest that applicants should be asked to list up to 20 cases. This should be sufficient to give a good picture of the applicant's practice, without being excessively burdensome to prospective applicants or unmanageable to the QCA secretariat.
    - 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.
    - Where they are able to comment on oral advocacy, opposing advocates' input is often the most useful evidence from practitioner assessors, and evidence from the applicant's leader (if any) is also very useful. The professional bodies' provisional view is that applicants should be expected to list their leader (if any) and the opposing advocate (or lead opposing advocate if there is more than one), and should be free to list other advocates in the case if they wish to do so.

Responding to the Consultation

25. Views are invited primarily on the principle of the proposed change to reduce the scope for "cherry picking" by applicants by requiring them to list all their substantial cases, and those involved in the case, over a prescribed period. Any views on the practical issues discussed in paragraphs 22 and 23 would also be welcome.

26. Responses to this consultation are requested by 31st July. Responses should be sent to Russell.wallman@qcappointments.org. If the professional bodies decide to go ahead with the proposed changes, they intend that they should be implemented in time for the 2019 competition.

Queen's Counsel Appointments
On behalf of the Law Society and the General Council of the Bar
April 2018

ANNEX A

Background to the Present QC Appointment Process

1. The appointment of barristers with special responsibility for advising and representing the monarch dates back to the early 17th century. Responsibility for advising the monarch on appointments rested with the Lord Chancellor. The Lord Chancellor consulted the senior judges before making his recommendations to the monarch, and in the latter years of the 20th century that became a formal process, perhaps because, as the number of barristers increased, it became increasingly implausible for the Lord Chancellor or a very small number of judges to have personal knowledge of all potential applicants. As the system evolved, consultation with the leaders of the practising Bar was added to the process, and in the last few years of the old system, the President of the Law Society was also consulted. The 1990 Courts and Legal Services Act made solicitors eligible to acquire rights of audience in the higher courts, and consequently solicitors became eligible for appointment as QC, although very few were in fact appointed.

2. However, the system continued to rely primarily on consultations with members of the senior judiciary, conducted by staff of the Lord Chancellor's Department. One significant criticism was that it was argued that a system relying primarily on consultation with the senior judges was inherently likely to favour those with backgrounds most similar to most of those judges – namely white, male, public-school educated barristers, at the potential expense of women, BAME advocates, and solicitors. Another concern was that it was widely considered that decisions were not always taken on a firm evidential basis. If a member of the senior judiciary had a general unease about the trustworthiness of a particular advocate, that un-particularised concern could be sufficient to ensure that the applicant concerned was not appointed. Matters of concern were not put to the applicant, so they did not have the opportunity to respond. That feature was one of the most important factors which lead to the weakening of professional confidence in the scheme.

3. As a result of these concerns, the Law Society decided that it would no longer participate in the consultation process, and began to campaign for the abolition of the QC scheme. At much the same time, Lord Chancellor Irvine had established a (non-statutory) Commission on Judicial Appointments to advise him on the judicial appointment process. At Lord Chancellor Irvine's request, the Commission for Judicial Appointments also examined the operation of the QC appointment process. Their conclusion was essentially that despite the great care and good faith of all those involved in the appointment process, the QC appointment process was no longer defensible as a modern appointment system, as there were no clear criteria for appointment, and decisions were not always based on first hand evidence of the applicants' qualities. The Lord Chancellor accordingly decided to suspend the operation of the system after the 2002 appointments

4. Lord Irvine's successor as Lord Chancellor, Lord Falconer, reviewed the position the following year. He concluded that, whilst he agreed that the former system was broken beyond repair, it was appropriate to continue for there to continue to be an authoritative way of identifying the advocates who were particularly well qualified to deal with the most complex cases in the higher courts, for two main reasons: domestically, it was important for those who needed to instruct advocates, but did not have detailed knowledge of the capabilities of those available, to have an objective means of identifying the leading advocates; and internationally, the QC scheme was of considerable value in promoting the legal services of England and Wales. Lord Chancellor Falconer considered, however, that the professional bodies rather than a Government Minister in the form of the Lord Chancellor should make the arrangements for identifying those who should be appointed. Accordingly, he asked the Bar Council and the Law Society to work together to produce an agreed scheme. It was recognised, however, that if the designation "QC" was to be retained, it would be necessary for the Lord Chancellor to retain a residual role, as a result of the convention that the monarch acts only on the advice of her Ministers.

5. After prolonged negotiations between teams from the Bar Council and the Law Society, the current QC scheme was agreed between the two branches of the profession in 2004. It was revised in 2006, in the light of experience of the first competition under the new process, and a review was carried out by the first Chair of the Selection Panel, Sir Duncan Nichol, in 2009. No fundamental changes arose from either of those reviews, and there have been no formal reviews since then, although there a number of minor changes have been made from time to time.

6. The key principles of the present scheme, which appear to have stood the test of time, are:
   - All applicants are assessed against a defined competency framework.
   - Evidence is sought only from assessors (judges, fellow practitioners and clients) who have first-hand experience of the applicant.
   - Further evidence is gathered through interviews of applicants.
   - All decisions about applicants are taken by an independent Selection Panel, consisting of members of the profession (including a retired judge) and distinguished lay person).
   - There is no provision for the Lord Chancellor, or any judge, to add to or remove a name from the list of recommended applicants settled by the Selection Panel.

ANNEX B

QC Schemes in Other Jurisdictions

Introduction

1. A number of other jurisdictions (almost all common law jurisdictions which are or were in the Commonwealth) operate Queen's Counsel schemes, or similar schemes under a different title. The schemes in other jurisdictions are in general less detailed, in terms of the requirements for appointment, than the scheme in England and Wales. This may in large part be a function of the fact that the schemes in other jurisdictions are covering a substantially smaller pool of advocates than England and Wales. Some of the schemes are outlined below.

Australia

2. Queen's Counsel (now described as Senior Counsel in some states) are appointed both at the Commonwealth level and at state level.

3. The selection process varies from state to state. In New South Wales, the process involves a committee made up for senior members of each state's Bar, and usually a non-practicing former barrister such as a retired judge. The committee consults with judges, peers, and law firms on the applicant's suitability for the position.

Canada

4. In Canada, both the Federal Government and provincial governments may appoint QCs. It appears that those appointed as Queen's Counsel at federal level are generally lawyers employed in the federal public service.

5. There has in the past been criticism that appointment as Queen's Counsel depended vastly on political affiliation. However, the seven provinces which continue to appoint lawyers as Queen's Counsel have sought to depoliticise the award. Candidates are increasingly screened by committees composed of representatives of the Bench and the Bar, and give advice to the relevant Attorney General on appointments.

6. In British Columbia, Queen's Counsel are appointed by the provincial Cabinet on the advice of the Attorney General. The Attorney General is required to consult with the Chief Justice of British Columbia, the Chief Justice of the Supreme Court of British Columbia, and two Benchers of the Law Society of British Columbia. In practice, the Attorney General appoints an advisory committee which includes those individuals as well as the Chief Judge of the Provincial Court, the President of the British Columbian branch of the Canadian Bar Association, and the Deputy Attorney General.

7. In New Brunswick the Lieutenant Governor appoints Queen's Counsel on the advice of a committee comprising the provincial Chief Justice, Attorney General and President of the Law Society.

8. In Newfoundland and Labrador, the provincial Cabinet appoints Queen's Counsel on the recommendation of the Minister of Justice. The Minister is required to consult the Legal Appointments Board, which consists of five individuals appointed by the Minister, two from a list recommended by the Law Society, one lawyer from outside the metropolitan area of St. John's, one bencher and one lawyer with less than ten years at the Bar.

9. In Nova Scotia, the Lieutenant Governor appoints Queen's Counsel on the advice of the provincial Cabinet. The Minister of Justice is advised by an independent advisory committee, through the Nova Scotia Barristers Society. 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.

10. In Prince Edward Island, the provincial Cabinet makes appointments on the recommendation of a committee consisting of the President of the provincial Law Society, a member of the Council of the Law Society, a person appointed by the provincial Minister of Justice, a senior judge, and a judge of the provincial Court of Prince Edward Island. Those recommended for appointment must be learned in the law; must have consistently exhibited a high standard of professional integrity; and must be of very good character.

11. In Saskatchewan, the provincial Cabinet appoints lawyers as Queen's Counsel. Appointments are based on recommendations from a Selection Committee consisting of the provincial Justice Minister and Attorney General, the Chief Justice of the provincial Court of Appeal or of the Court of Queen's Bench, and the past Presidents of the provincial branch of the Canadian Bar Association and of the Law Society.

Hong Kong

12. The former Queen's Counsel scheme in Hong Kong is now known as "Senior Counsel".

13. Appointments are made by the Chief Justice, after consultation with the Chairman of the Bar Council and the President of the Law Society. The criteria for appointment are that the advocate has "sufficient ability and standing as a barrister, and sufficient knowledge of the law, to be accorded that status" and has at least ten years' experience.

New Zealand

14. Appointments are formally made by the Governor General, on recommendation of the Attorney General who first consults with the Chief Justice of New Zealand. Prior to the that, the Solicitor General (on behalf of the Attorney General) consults the New Zealand Law Society and the New Zealand Bar Association.

15. In order to be appointed, applicants must be practising independently as barristers. They must:
    - demonstrate the overarching requirement of excellence, showing length and depth of experience;
    - have expert, up-to-date legal knowledge;
    - show superior skill in oral and/or written persuasive argument;
    - be able to demonstrate independence in their commitment to their clients' interests;
    - show integrity and honesty in dealings with clients, colleagues and the judiciary;
    - show leadership in setting and maintaining the profession's standards.

16. Applicants apply by setting out their professional details, career history and any publications, together with an outline of their current practice including any areas of specialism and an overview of the main types of matters they have been involved in over the past five years. Applicants are asked to identify up to ten matters they consider most significant in the last three years. They provide a self-assessment as to how they meet the criteria. Candidates may provide the names of referees if they wish to do so, but they are not required to do so. Members of the judiciary may not be named as referees.

17. In order to participate in the consultation process, the Bar Association has a panel of senior silks who consult with the President. The Law Society checks references. The Law Society and the Bar Association then jointly compile a shortlist of recommended appointments which is given to the Solicitor General.

18. There are at present 127 Queen's Counsel with practising certificates in New Zealand, almost exactly 10% of the total size of the referral Bar.

Republic of Ireland

19. The equivalent system in the Republic of Ireland is known as "Senior Counsel". At present, only barristers with at least 10 years' experience are eligible, although a new Legal Services Act (not yet fully implemented) will allow solicitors to apply

20. Appointments are formally made by the Taoiseach, who is advised by an Advisory Committee. The Advisory Committee consists of the Chief Justice, the President of the High Court, the Attorney General and the Chairman of the Bar.

21. Applicants apply on a quite detailed application form, seeking information about their experience, income, and the reported cases in which they have been involved. Applicants are required to nominate three referees, two of whom must be lawyers, and to provide with their application two references from persons holding judicial office.

22. Applicants will not be appointed unless they establish that they have:
    - an exceptional capacity for court advocacy;
    - substantial advocacy experience in higher and appellate courts;
    - professional independence and adherence to the highest ethical standards required of an advocate practicing in the courts;
    - tax compliance, compliance with the Professional Code of Conduct and all applicable continuing professional development requirements;
    - a thorough knowledge of the law in any area in which the barrister holds himself or herself out to be competent in practice, and a very high degree of expertise in any area of professed speciality; an ability to present persuasive and sophisticated arguments to the court; to respond to cases and trials as they unfold; to deal with complicated legal and factual issues at short notice; and an ability to analyse comprehensively complex issues of fact and law;
    - leadership, independence of mind and sound judgment together with an ability to stand up courageously for the client and to advance an argument that might not be popular; a capacity to work with a client and other lawyers and to maintain integrity, courtesy and honest behaviour in all professional dealings.

23. There is provision for the Advisory Committee to interview applicants where they believe it necessary or appropriate to do so.

Scotland

24. Appointments are made by the Queen on the recommendation of the Lord President.

25. Applicants fill in a form with a full CV, and a statement about themselves. They nominate two referees who would normally be judges. The applicants are considered by a small judicial committee. All the High Court judges are told the names of all the applicants for any comments they might have. The Dean of Faculty is also shown the list, but that is simply to check if there have been any discipline issues with the applicants concerned.

26. The Lord President then makes the recommendations to the Queen.

South Africa

27. The application process is slightly different for each of the 12 Bars throughout the country. In the bigger Bars, a junior counsel must apply for silk, supported by two sponsors. The application requires the provision of a great deal of information about the applicant's, their most notable cases, any stints as an acting judge, and the role they have played in advancing the transformation of the Bar.

28. Applications are considered by a sub-committee of silks, who make recommendations to the Bar Council concerned, which in turn decides which applicants to promote. The Bar Council's recommendations are put forward to the Judge President of the local division of the High Court, and from there (with or without alterations) to the Minister of Justice. The Minister of Justice then forwards the recommendations to the State President, who formally awards letters patent to the successful applicants.

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