

Queen's Counsel Appointments System

Consultation paper - Dealing with matters of character, conduct and integrity

Response on behalf of the Planning and Environment Bar Association

1. The Planning and Environment Bar Association ('PEBA') is the professional bar association for barristers who specialise in planning, environment, compulsory purchase, highways, housing, rating and other aspects of local government and administrative law. The majority of our members are barristers in private practice.
2. PEBA is aware that the Bar Council is to respond to the consultation paper. The Bar Council will speak for the profession as a whole, including our members, in its response. Members of PEBA share with all other members of the Bar a very strong interest in maintaining the integrity, transparency and public confidence in the system whereby appointments are made to Queen's Counsel.
3. In response to the individual questions posed in paragraph 61 of the consultation paper:
 1. PEBA considers that there should continue to be checks on the character, conduct and integrity of applicants for appointment as QC. Permission to practice reflects the minimum standard expected of any practitioner. It is not a sufficient basis in itself upon which to maintain public confidence in the appointment of a QC. We consider that the current system based upon self-reporting and disclosure in the application form works well.
 2. PEBA considers that criminal findings taken into account should not necessarily be limited only to findings that have resulted in regulatory or disciplinary action against the applicant. Whilst the principal focus will plainly be upon any criminal finding that does so result, it should not be assumed that a finding that does not do so is immaterial to the assessment of the candidate's application.
 3. It is for the Bar Council to respond on behalf of the profession on the question of pending criminal charges.
 4. It is for the Bar Council to respond on behalf of the profession on the question of disclosure of bankruptcies, IVAs and directors' disqualifications that have not resulted in regulatory action.

5. We do not think that the Selection Panel should adopt a rule that adverse regulatory findings related to advocacy be given more weight than other such findings. We consider that such a rule risks being seen to diminish the significance of other findings of substantial misconduct, and undermining public confidence in the appointments system. It is for the Bar Council to respond in more detail on the questions raised on this issue in paragraphs 46 to 49 of the consultation paper.
6. We consider that applicants should continue to be asked to make appropriate disclosure of Legal Ombudsman matters and negligence claims. Such information cannot be ruled out as immaterial to the assessment. It is for the Bar Council to respond on where the limits of this requirement should be set.
7. We do not consider that the Panel should seek information from regulators about matters that were not upheld.
8. It is for the Bar Council to respond in detail on the approach set out in paragraph 54 of the consultation paper to the collection and consideration of evidence about matters of character, conduct and integrity. There is a careful balance to be struck between fairness and transparency to the applicant, and safeguarding the ability of assessors and referees to report with proper confidence to the Panel. We consider that applicants accept that.
9. We do not consider that input on integrity matters should be sought from the leaders of the profession or of specialist Bar associations. It is unrealistic to expect that, in the majority of cases, leaders will know enough about the candidate to be able to offer more than anecdotal comments. Such material is not of any assistance to the Panel, and there is a real risk of unfairness and a lack of transparency in such an approach.
10. It is for the Bar Council to respond on the questions relating to the withdrawal or suspension of QC designation.

30 September 2017