Applying for Silk

In this article I attempt to give a perspective on Silk applications. My competence for writing anything on this subject is founded on four years as a member of the QC Appointments Board (QCA) between 2008 and 2012. I was involved in four annual competitions in that capacity.

To say that the system has changed from the pre-QCA days is an accurate statement summarising a huge alteration in the process. When I considered applying for Silk 30 years ago, the then Presiding Judge of my Circuit told me 'the Circuit will look after you'; and his extremely generous letter of congratulations commenced with 'As you can see, I am a man of my word'. From my personal viewpoint, both statements were absolutely true.

One can defend the old system for some plus points. The judges who presided were well placed to assess applicants. They knew the needs of their circuit or speciality. The numbers were quite small, because the Bar was much smaller. Discussion between judges and circuit leaders about Silk applicants was quite energetic, and there were few serious mistakes. High earnings as an indication of practice were an important part of the assessment process, as it was believed that they signified potential success in Silk. The Lord Chancellor for the time being took a direct interest in the process, and was permitted to intervene in the content of the lists. There was no application fee, and there were certainly some who applied annually and succeeded after several attempts. With rare exceptions, there was a good living to be made. In the criminal law, as elsewhere, there was a near automatic translation to bigger and better cases. Silks appeared with juniors in all homicide cases, in all rape trials, and in almost all serious cases. For most, Silk was a passport to eventual appointment as a judge at least at circuit bench level.

However, the system lacked transparency and accountability, as well as diversity. Very, very few women were appointed; and appointments from the minority ethnic part of the community were rare enough to be almost sensational. In comparison, under the present QCA system there has been a very determined attempt to appoint on merit alone, with a proper recognition of the importance of diversity and of the events of life. In 2013 two extremely able applicants were appointed who were on

maternity leave at the time of their interviews. Any sense of grievance is no more justified among minority ethnic applicants than among others who have not been appointed. Some applications have succeeded by able mavericks, whose faces might not have fitted under the old system. Some successes have been a surprise, but in every case the appointment has been evidence based.

The foundation of evidence upon which QCA recommendations are made arises from the very full application process. Applicants are required to provide evidence of excellence in four competencies – Knowledge and Use of the Law; Advocacy (written and oral); Working with others; and Diversity. The evidence is drawn from self-assessment written by the applicant in relation to each competency; and from the evidence provided by assessors. The assessors are drawn from three categories, namely the judiciary before whom the applicant has appeared, preferably in the previous two years, fellow practitioners, and instructing lawyers/bodies. In each category the applicant may nominate one assessor, and the remainder are chosen by QCA from the cases described in the application form.

The completion of the substantial forms is very important, and requires detailed and accurate preparation. Repetition, flummery and waffle score badly. Linking each claim to evidence scores well. It is insufficient to make general claims of brilliance, without carefully summarised evidential examples.

The choice of nominated judge is important. A three-week hearing before a circuit judge is likely to produce a far more useful reference than a fleeting appearance in the Court of Appeal, in the absence of an indication from the very senior judiciary, with their rapid and pressurised turnover. Experience shows that a putative Silk applicant should take judges and senior colleagues into their confidence, so that the person concerned is not later taken by surprise by a request to act as an assessor. Going to see judges on a confidential basis can produce good advice, sometimes of the 'apply next year' or even 'don't apply at all' variety. The cost of an application, even an unsuccessful one, is substantial, and this kind of precaution will save money. Judges and colleagues are generally kind, but I have read some comments excoriating in their fullness, and sometimes in their cold brevity.

The standard of judicial assessments has varied but improved during my time as a member of QCA. However, there are culprits among the judges who do not realise how seriously their views, favourable or

otherwise, are taken. For the majority of applicants, applying for Silk is the most important event in their professional lives between Call and retirement. A judge who cannot remember the applicant, or who believes that they did not see enough to make an assessment, should say so: when this happens, the QCA administration approach someone better equipped to give a view. For many of us, experience before particular judges has been a huge part of our learning process, and ensuring that judges best equipped on a knowledge base to comment on the applicant is important.

Silk applicants are of course a self-selecting group. Few (but some) apply delusionally, and few hopelessly. Some very good practitioners are not appointed. It is no shame to be seen as very good but short of excellent.

For most, the key issue before applying should be the prospects of obtaining work at the senior level. In the general area of commercial law, currently the market is buoyant and application often makes a great deal of sense. It is very different where there is an expected dependence on publicly funded work. Legal Aid cuts, the welcome reduction in crime, the non-briefing of Silks in many serious prosecutions, the limited availability of certification for two counsel, the rise of mediation in family cases, and the increasing use of the in-house advocate in all sectors mean that taking Silk can be financially risky, and the result depressing. Increasing numbers of Silks have become peripatetic between chambers in their troubled search for elusive briefs. Applications for judicial appointments have increased as a result.

The letters QC undoubtedly have a cachet, and they are won on merit in almost every case. However, unlike 30 years ago, the decision whether or not to apply needs a hard-headed business analysis, not always given.

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