

## 4 Queen's Counsel

- 4.1** Queen's Counsel ('silks') are appointed by The Queen on the recommendation of the Lord Chancellor. The rank of Queen's Counsel is a mark of distinction and quality and is awarded to those advocates, that is lawyers who appear regularly in the courts, who have proved themselves to be the leading members of the profession. New silks are traditionally appointed annually, on the first day of the Easter Legal Term.
- 4.2** To be eligible for appointment, applicants must be advocates (barristers or solicitor advocates) who hold, and are entitled to exercise, full rights of audience in the High Court or the Crown Court.

### Selection Criteria

- 4.3** The Lord Chancellor recommends the grant of silk only to those practitioners who have reached the appropriate level of professional eminence and distinction and display the following attributes to a degree which marks them out as leaders of the profession:
- **Advocacy:**
    - Outstanding ability as an advocate, to a standard to be expected of Queen's Counsel in the applicant's field of practice.
  - **Legal ability and practice:**
    - a) sound intellectual ability and a thorough, comprehensive and up to date knowledge of law and procedures in the applicant's field of practice; and
    - b) a large and high quality practice based on demanding cases.
  - **Professional qualities:**
    - a) integrity, having:
      - a history of honesty, discretion and plain-dealing with professional colleagues, lay and professional clients and the courts;
      - independence of mind and moral courage; and
      - the trust and confidence of others.

b) professional standing:

having the respect of the Bench and profession in observing the advocate's duty to the Court and to the administration of Justice, while presenting their client's case; and being formidable, fair and honourable as an opponent.

c) maturity of judgement and balance.

**4.4** The Lord Chancellor recommends for appointment those who appear to him fully to satisfy the criteria for appointment, regardless of sex, ethnic origin, sexual orientation, professional background or any other factor.

**4.5** In order to assess whether an applicant fulfils these criteria to the required level of distinction, he consults a wide range of the judiciary and the legal profession. In 1999/2000, he consulted over 450 individuals and organisations, and received over 5,400 comments on the field of applicants. To ensure that applicants are judged by different commentators on the same basis a classification system is used. For appointments in 2000 the following classifications were used:

A+ Recommended for appointment: fulfils all of the criteria to an exceptional degree which marks the applicant out as a leader of the profession. The applicant has demonstrated the potential to rise to a distinguished level within the ranks of silk or the judiciary.

A Recommended for appointment: fulfils all of the criteria to an exceptional degree which marks the applicant out as a leader of the profession.

B Not recommended for appointment: fulfils all of the criteria, but not to a degree which marks the applicant out as a leader of the profession.

C Not recommended for appointment: fulfils some, but not all, of the criteria.

D Not recommended: does not fulfil the criteria.

**4.6** Of the 506 applicants, 78 were successful (for detailed statistics, including comparisons with previous years, see the table below).

### Feedback

**4.7** It is an important aspect of the silk competition, as with judicial appointments competitions, that unsuccessful applicants are able to discuss their applications with officials. These discussions provide a forum for the applicant to learn how their application was received and whether there are any particular weaknesses that may have contributed to their lack of success; and to discuss any concerns they may have about the silk process.

- 4.8** These discussions have rapidly become popular with unsuccessful applicants. In the 1997/98 competition, 451 applicants were unsuccessful. Of these, 67 requested and were given feedback on their application (55 by appointment on the telephone and 12 in person). In the 1998/99 competition, 484 applicants were unsuccessful. Of these, 149 requested and were given feedback on their application (135 by appointment on the telephone and 14 in person).
- 4.9** In the 1999/2000 competition, 428 applicants were unsuccessful. By 22 May 2000, 159 of these had requested feedback on their application.

### Developments

- 4.10** The silk system has continued to develop to ensure that it is open, fair and accountable. It remains the goal of the Lord Chancellor to have available to him the best advice based on the views, fairly and frankly expressed and efficiently and accurately gathered, of the consultation community; and to ensure that individual applicants are treated equally, on their own merits alone.
- 4.11** The Lord Chancellor remains accountable for the silk procedure as a whole to Parliament – a benefit of the Government's involvement in the identification and appointment of the senior rank of advocates.
- 4.12** The silk system will continue to develop. Following the Access to Justice Act 1999, an application fee was charged for the first time. This was set at £335, to remove the element of public subsidy which previously existed.
- 4.13** The Lord Chancellor accepts the recommendations made by Sir Leonard Peach regarding the silk process (Annex C). He agrees that the assessment for the rank of Queen's Counsel should be conducted against the published criteria and not be confused with potential for the judiciary. In the forthcoming silk round the classification A+, which has previously denoted that the applicant has demonstrated the potential to rise to a distinguished level within the ranks of silk or the judiciary (see paragraph 4.5), will not refer to judicial potential.
- 4.14** The assessment form for consultees is to be restructured to include more details about the criteria and will seek details of how the consultee has formed his or her views. More space will be available for consultees to record their views. This should benefit nominated consultees who are often consulted on a small number of applicants and who can often offer a fuller assessment. Applicants will be invited to name between three and six nominated consultees who do not already feature on the list of regular consultees.
- 4.15** Before making their recommendations to the Lord Chancellor officials will review the nominated consultees' comments as a separate group and give these appropriate weight. The Lord Chancellor agrees with Sir Leonard that applicants should be required to provide written evidence that they meet the published criteria. The Lord Chancellor's officials will also consider these self assessments when deciding whom to recommend to the Lord Chancellor.

4.16 Sir Leonard's recommendation that some candidates might be interviewed in exceptional circumstances is under consideration.

**Honorary silk**

4.17 Separately, the Lord Chancellor recommends the award of Queen's Counsel *honoris causa* ('honorary silk') to those who have made an exceptionally distinguished contribution to the law in England and Wales and the Commonwealth outside the field of advocacy. Those considered for the award include academic lawyers, lawyers in the public service and employed lawyers. This year, the Lord Chancellor recommended the award to Nelson Mandela; David Yale; Professor Roger Hood; and Professor Paul Craig.

4.18 The following table gives statistical information about this and previous years' competitions.

	1993	1994	1995	1996	1997	1998	1999	2000
<b>Number of Applicants</b>								
Total Applicants	472	539	492	488	500	511	553	506
Total Awards (excl. Honorary silk)	70	77	71	66	68	60	69	78
<b>Male Applicants</b>								
Applicants	435	496	450	448	459	465	504	453
Awards	64	68	63	62	63	50	60	68
<b>Female Applicants</b>								
Applicants	37	43	42	40	41	46	49	53
Awards	6	9	8	4	5	10	9	10
<b>Ethnic Minority Applicants</b>								
Applicants	14	11	12	14	12	18	30	24
Awards	1	1	1	1	1	4	5	3
<b>Solicitor Applicants</b>								
Applicants				5	6	7	9	6
Awards				0	2	1	1	0

	1993	1994	1995	1996	1997	1998	1999	2000
<b>Percentage of Applicants granted silk</b>								
Total	14.8	14.3	14.4	13.5	13.6	11.7	12.5	15.4
Male	14.7	13.7	14.0	13.8	13.7	10.8	11.9	15.0
Female	16.2	20.9	19.0	10.0	12.2	21.7	18.4	18.9
Non-Ethnic Minority	15.1	14.4	14.6	13.7	13.7	11.4	12.2	15.6
Ethnic Minority	7.1	9.1	8.3	7.1	8.3	22.2	16.7	12.5
Honorary silk awards	7	4	3	6	8	3	3	4

### Earnings

**4.19** Sir Leonard Peach also recommended that: “a table of fees for successful candidates ... be published annually”. The table below was published in the public announcement of the new silks, in fulfilment of this recommendation.

**4.20** Applicants are asked to declare their earnings for each of the previous three completed financial years. The average of these three figures was calculated for each applicant, and these averages analysed to generate the figures given in the table.

	All applicants	Unsuccessful applicants	Successful applicants
Maximum	£634,000	£634,000	£570,667
3rd quartile	£211,000	£197,000	£253,250
2nd quartile	£149,942	£145,990	£190,000
1st quartile	£114,667	£108,083	£136,083
Minimum	£ 40,667	£ 40,667	£ 77,667
Average	£172,971	£165,587	£213,110