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**Is it right that QCs worry what judges think about them?**

Most of us at sometime will instruct a lawyer and the more serious the matter the keener we are to instruct someone who is good if not the best in the field. We ascertain this by track record, recommendation, reputation, previous cases and also with some comfort that if they are one of the top in their field they have done that as against competition from other lawyers in that area.

But there are a group of lawyers who are given a special status over and above healthy competition. They are what is known as QCs. The latest round of applications for elevation to such a status is currently under way. Once achieved this special status allows those appointed to charge higher fees than even those doing the same job. What is more in addition to this they are allowed to bring in another lawyer known as a Junior Counsel to assist him or her with a job who in turn can charge about two thirds of what the QC fee is. That is all very well if you can afford it but it can hit you particularly hard if you are on the losing side where your opponent has employed such persons. You will have to pay their bill. There is nothing that you can do about it because that is what the system allows.

These QC's also have a special status before the judges. After all as we will see it was they who picked them. That special status is difficult to define but it may have something to do with them being given more respect by the judges. That may be particularly galling if you have not employed such a QC with Junior Counsel and indeed may force you into doing so so that you may gain somewhat intangibly from that standing and of course pay more for the privilege.

Yet if someone is a member of that group it is in fact no guarantee that they will be one of the best in their field. They may have gained that status some time ago and it is for life. Past performance as we know is no guarantee of future performance.

So how does one become a member of that special group? Membership is something which many aspire to and boils down at the end of the day to being picked by the judges before whom they appear. Would be QCs submit an application in written form to the Lord President who then does a round robin of all the judges who may or may not know them and then come back with a "do not know", "yes" or "no". Applicants can if they want (and they may not for fear of upsetting anyone) ask for reasons if there was a no. They will certainly not be able to challenge what a particular judge has or has not said about them. There is also no prospect of review or appeal. All this is somewhat

surprising ironically in a process in which judges themselves are involved and who should have regard to natural justice.

It may also cause some unease for those having to use the legal process to consider that while they would expect the person advocating their case to have their interests in mind and comply with the duties to the court that there could also be a factor of their own interests given the judge before whom they are appearing may ultimately have a say in assessing them for that special status, their earning power and career.

The system is thought to be so anti competitive that the Office of Fair Trading wishes the status to be abolished. One can perhaps see why. However, that seems to have been a step too far. England, Wales and Northern Ireland have instead revised the whole process and removed from it the most offending part, namely the involvement of judges in the process. However the jury is still out as far as the office of Fair Trading is concerned and they have reserved their position to look at the matter again.

In Scotland we have done the least and arguably next to nothing. An observer was appointed by the Scottish Executive to look at the process and report his observations. Their report was discretely posted on the website.

Looking at the website there is something of an anti climax. The observer, Mr Roy Cameron from a police background ( and one wonders what this has to do with this process) has found it seems that apart from some tinkering all is well and because we are such a close knit community in Scotland we can distinguish ourselves from England and Wales. That however does not distinguish us from Northern Ireland. Indeed it is because we are a close knit community, and some no doubt closer in that community than others, that objectivity and openness is all the more necessary.

It is interesting that the Scottish Executive in proclaiming its efforts in making the legal profession more competitive, open and accountable has singularly failed to grasp this nettle and in particular the challenge thrown down by the Office of Fair Trading. The tinkering will not do.