

APPENDIX 1

(referred to in paragraph 9)

List of bodies and individuals who provided us with views and information

Association of British Chambers of Commerce
Association of County Councils
Association of District Councils
Association of Metropolitan Authorities
British Institute of International and Comparative Law
British Insurance Association
Centre for Protective Law Studies
Chartered Institute of Patent Agents
City of London Solicitors Company
Committee of London Clearing Bankers
Confederation of British Industry
Consumers' Association
Department of the Director of Public Prosecutions
General Dental Council
General Medical Council
General Optical Council
Home Office
Institute of Actuaries
Institute of Arbitrators
Institute of Chartered Accountants in England and Wales
Institute of Civil Engineers
Institute of Directors
Law Society
Legal Action Group
Lloyds Underwriters Association
Lord Chancellor's Office
Lord Chief Justice (Lord Widgery)
Master of the Rolls (Lord Denning)
National Federation of Consumer Groups
President of the Family Division (Sir George Baker OBE)
Presiding Special Commissioner of Income Tax
Royal College of Veterinary Surgeons
Royal Institute of British Architects
Royal Institution of Chartered Surveyors
Sheffield Legal Action Group
Stock Exchange
A senior lawyer in the Treasury Solicitors Office
Seven barristers
Eleven firms of solicitors
Six solicitors

APPENDIX 2

(referred to in paragraphs 32, 39 and 146)

Rules of conduct and etiquette relating to QCs and juniors

1. A QC ought not to appear as an advocate in any Court of Law without a junior, but where he appears elsewhere as an advocate, while it is generally desirable that he should have a junior, there is no rule of the profession requiring him to do so unless a junior has been employed in the preliminary proceedings, but he always has a discretion as to whether he will appear if a junior is not also briefed.

2. For the purpose of this rule the expression 'Court of Law' includes a Court Martial, the Lands Tribunal, the Transport Tribunal and an Agricultural Land Tribunal, but does not include a ministerial or Local Government Inquiry (see note (a)), a Parliamentary Committee or a hearing before the General or Special Commissioners of Income Tax.

3. The general rule is not infringed in an appeal to the Privy Council where a QC is briefed with a junior who, although not a member of the English Bar, has himself the right of audience in that case before the Privy Council (see note (b)).

4. A Commonwealth QC who is also a member of the English Bar but not an English QC would be entitled to practise as a QC in the Privy Council and there is no rule which would make it obligatory for him to have a junior, but it would be unusual for him to appear without a junior (see note (c)).

5. Where a QC is instructed to appear at the taking of evidence overseas to be used subsequently in proceedings in the High Court, a junior need not also be instructed (see note (d)).

6. A QC at the Parliamentary Bar should not accept a brief to promote a Private Bill, without a junior being briefed with him; but he may accept a brief to oppose a Private Bill without a junior, and it is not contrary to etiquette for two QCs to accept such briefs to oppose together without a junior a Private Bill on behalf of a single petitioner against the Bill (see note (e)).

7. There is no objection to a barrister recommending another barrister as his leader or junior if, but only if, he is asked for his opinion (see note (f)).

8. A QC may accept instructions to draft a document or settle a draft of any kind with a junior but otherwise should do so only where:

- (i) the crucial content of the drafting work to be done depends wholly or mainly on his own invention, and is ancillary to advice given by him and the draft is not intended for the conduct of proceedings and is of such length and required in such circumstances as would not seriously infringe the general practice of settling drafts only in consultation with a junior, or
- (ii) the document is necessary for the conduct of proceedings in which it is permissible for a QC to appear at the hearing without a junior and it is intended that he should be so instructed (see note (g)).

9. This rule is of general application, eg to such documents as Debentures or Articles of Association and to Patent and Trade Mark Proceedings, and not to contentious matters only (see note (h)); and it applies even where the documents are in a foreign language and intended for use abroad (see note (i)). A QC may, however, draft a letter where it is ancillary to an opinion given by him in writing or in conference but he should not do so on separate instructions (see note (j)).

10. Where papers have been delivered simultaneously to both a QC and junior counsel, the QC should not advise except in consultation with the junior, but where no papers have been delivered to junior counsel, a QC may advise in conference or give a written opinion without the assistance of a junior (see note (k)).

11. A QC should not draft or settle a petition or case in proceedings before the Privy Council without the assistance of a junior (see note (l)) and at the Parliamentary Bar a QC should not draft or settle a Private Bill or a Petition against a Private Bill except along or in consultation with a junior (see note (m)).

12. It is contrary to professional etiquette for a QC, if in practice at the Bar, to accept a permanent appointment as counsel to a Government Department which necessarily involves his doing a junior's work (see note (n)).

13. A QC is permitted and should normally be willing at any time before the first anniversary (see note (o)) of his appointment as a QC:

- (i) to settle, amend, re-settle or otherwise complete as a junior, any document relating to a non-contentious matter which he was originally instructed to settle before his appointment;
- (ii) to settle pleadings and other documents, appear at the trial or at any hearing preceding the trial and do any other ordinary work of a junior in any proceeding (whether civil or criminal) in regard to which he was instructed before his appointment (whether or not he was retained within the meaning of Retainer Rules 15 to 22).

14. A QC may at his discretion continue to act as a junior (including settling pleadings, notices of appeal and other documents, appearing at any hearing (whether original or appellate) and doing any other ordinary work of a junior) without limit of time:

- (i) in a criminal case, if he was instructed in the case (whether for the Prosecution or the Defence) before his appointment as a QC;
- (ii) in a civil suit, if he was instructed therein before his appointment as a QC and before the first anniversary of his appointment appeared as a junior at the trial or on an appeal therein (see note (l)).

15. Save as aforesaid, a QC should refuse to continue to act as a junior in any matter or proceeding after the first anniversary of his appointment as a QC, unless in his opinion such refusal would cause hardship to the client, in which event he may at his discretion continue so to act for any purpose in regard to such matter or proceeding until the second anniversary of his appointment.

16. Where Counsel by his clerk agrees to accept a brief, a special retainer or instructions in a new matter or proceeding but before delivery thereof is informed that he is to be appointed a QC, he may accept such brief, special retainer or

instructions provided that it is or they are delivered before he is appointed a QC. Save as aforesaid, counsel should not accept as a junior any brief or instructions or special retainer in a new matter or proceeding between the date when he is informed that he is to be appointed a QC and the date of his appointment (see note (p)).

Notes Relating to Appendix 2

- (a) AS 1935, p 6. Restated in AS 1951, p 30; p 22; 1961, p 23.
- (b) AS 1939, p 6.
- (c) AS 1900–01, p 11. (Opinion of the Council given with the assistance of the Registrar of the Privy Council).
- (d) AS 1970–71 which rescinded a ruling (AS 1963, p 25) to the opposite effect.
- (e) AS 1924, p 7.
- (f) AS 1958, p 23 (which cancels a ruling at AS 1902–03, p 3, to the opposite effect); AS 1961, p 24.
- (g) Ruling adopted by the General Council of the Bar, July 1974 which supersedes the old rule in AS 1901–02, p 4, and amendments thereto made in AS 1971–72, p 20, and 1972–73, p 28.
- (h) AS 1905–06, p 12; 1938, p 10.
- (i) AS 1961, p 24.
- (j) AS 1960, p 22.
- (k) AS 1951, p 30.
- (l) AS 1909, p 7.
- (m) AS 1924, p 7.
- (n) AS 1906–07, p 10.
- (o) See note (p) post.
- (p) AS 1965, p 30 ‘Anniversary’ means a year commencing on the actual date of appointment to silk, not the day of the announcement (AS 1971–72, p 36).

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