

Is it time to scrap silk?

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Successful candidates for the exalted title of Queen's Counsel must complete a 65-page application form, stating how their experience meets various competence criteria. They must also stump up almost £3,000.

The 2022 QC competition appointment process opened last month (see ['How to Become a QC'](#)). But is there still a place for the award in a modern, meritocratic and egalitarian 21st century legal system? Or is it time for the term Queen's Counsel to be consigned to the history books?

Where is the public interest in allowing a lawyer who can afford the application fee, and who works in an area where taking silk makes financial sense, get an accolade which – in the eyes of some – puts them above their equally skilled and experienced colleagues?

Supporters – generally those in possession of the letters – argue that the rank is needed to help members of the public, solicitors and general counsel, particularly those overseas, identify the best lawyers to instruct. Barristers also argue that it denotes seniority in a profession where there is no promotion (other than the dubious honour of becoming head of chambers) unless one ascends the judicial ladder. They draw an analogy with the medical profession, comparing themselves to specialist consultants promoted from the ranks of junior doctors.

This analogy falls down, however. Medics are in most cases in receipt of state-funded salaries, with the rank of consultant denoting a clear element of technical superiority over junior colleagues. And while doctors can be promoted to consultants, they cannot be awarded the status of Queen's Doctor.

Teachers do not become QTs, and nor can a reporter become a Queen's Journalist.

The bar is, also, supposed to be a specialist profession – it does not need to have another quality mark of expertise. You can normally get an idea of how long someone has been practising by the number of years they have been qualified; and lay or professional clients will be the experts in how good they are.

An absence of involvement with their professional regulator and honourable mentions in judgments could also help. In the age of social media, too, poor advocates have fewer places to hide.

Historically, in England KCs and QCs were appointed by the monarch. They were representatives of the Crown, few in number and given precedence in court. The first was Sir Francis Bacon (pictured) in 1603

Later, in the 19th century, King's Counsel became a way to recognise senior barristers and their numbers grew. The earliest English law list, published in 1775, records 165 members of the bar, of whom 14 were King's Counsel – about 8.5%.

The awards are not now spread among the profession in the same proportions among different groups and specialisms. White men are over-represented among the ranks, while women and those from an ethnic minority background are under-represented.

In England, the first women to be appointed KC were Helena Normanton and Rose Heilbron in 1949 – almost 30 years after women were allowed to become lawyers. Thereafter the numbers grew at a glacial pace. Thirty-eight years after her mother's appointment, when Hilary Heilbron took silk in 1987, she was only the 29th woman.

Unlike the bar, solicitors have long had a set pattern of career development – from assistant, to associate, partner and equity partner and then on to the management ladder. Nevertheless, in 1995, the bar's badge of honour and prestige was extended to solicitors after they were given rights of audience in the higher courts. Almost three decades on they continue to account for a relatively small number of those applying and appointed.

Back then the bar called for reform of the way that the elite rank in the legal profession were chosen, to remove the 'secret soundings' of judges and involvement of the lord chancellor. As a result, in 2003, the then lord chancellor, Lord Irvine, suspended the QC award. Many believed that would be the end of it. The sky did not fall in. Lay and professional clients still managed to instruct barristers.

A rearguard action for retention of the title resulted in a reformed system managed by the independent Queen's Counsel Selection Panel, with a lay chair. Some believe solicitor leaders should have argued at the time for the abolition of the anachronistic title, instead of pandering to the bar by supporting its retention in a marginally reformed state. After all, even under the new system the awards continue to favour the same groups. A Bar Council report, published in December 2021, revealed that there were just five black female QCs and 17 black male QCs, and 17 female Asian silks and 60 Asian men.

In the six main practice areas, some had no QCs from an ethnic minority background at all.

The position is improving in some respects. Women have started to be appointed in greater numbers and are more successful in their applications than men. In the most recent competition, 101 new Queen's Counsel were appointed. Among them were 45 women, including 15 from an ethnic minority background.

There are other anomalies and curiosities. Full QC status is given to the government's law officers, where they have not achieved sufficient seniority in legal practice prior to their appointment. And the title of Honorary QC is bestowed in recognition of a stellar contribution made by those in the profession to the law of England and Wales outside the courtroom.

Even the honorary designation is not uncontroversial. Some argue that making up fake silks – or 'nylons' – devalues the 'brand' further.