

## **CPS Appeals Against Grading Assessment.**

**[As amended on 23 January 2012]**

### **Amendment to CPS Appeal Documentation.**

The guidance issued earlier today [23 January 2012] has been amended to include a bit of welcome news to reflect some flexibility brought into the appeal process. So please discard the original guidance note and treat this as the definitive version. [Until the goalposts move again!]

At just after 6 o'clock this evening [23 January 2012] the NLQC passed on the following amendment for general distribution following a Bar Council Committee meeting.

- (i) The total number of words permitted in your appeal form has been increased from a measly 200 to a modest 500; it is better than nothing.

This amended guidance also reflects issues and queries raised by a variety of applicants in the last 24 hrs and I have therefore incorporated changes to ensure the information is available.

It is highly likely that further guidance and advice will be forthcoming in the next week or so as we all settle into dealing with this appeal process, to which we are all frankly relative novices. I am sure the CPS will seek to clarify the position etc. Apologies for this slightly disjointed approach but the time limit for submitting the application will be upon you quicker than you think and it was thought important to give all applicants at least something of a head start.

## **Context of this guidance**

Since Thursday last week a number of circuit members have contacted me to seek advice and express variously their surprise/dismay/disappointment and in some cases outright fury at the result of the recent CPS grading exercise. It is clear that a significant number of long established barristers, many of whom within the eyes and opinion of their fellow counsel have a proven track record in prosecuting at grade 4 have gone down to grade 3 and likewise some formerly grade 3 have been nudged down to grade 2. In a number of instances some have been removed from the list completely.

Once the fury/disappointment has dimmed a little we need to see what can be done to remedy those results through the appeal process.

After discussions with NLQC as Circuit Leader I offered to put forward this short note, with accompanying amendment, to give some assistance by way of guidance and advice. I, along with a number of other silks, sat on the assessment panels and therefore have experienced at first hand how this relatively novel paper based assessment system worked. I hope I can give some sense of steer to those who want to appeal in order to try and maximise this one and only opportunity to correct/amend the decision that has affected a person's grading.

## **Appeal Limitations.**

The appeal process has certain limitations:-

- (1) You cannot just resend the form with corrections and additions- this is because there is a 500 word limit on the appeal form and that in practical terms is quite a severe restriction. For avoidance of doubt the 500 words appears only to apply to the contents of the form.

Your paperwork examples and/or additional evidence etc are not covered.

- (2) You can use the form to amend your previous entries and give supplementary material to correct the weak spots identified in your form. But again be alert to the rationed word count. I have done a test run on 500 words and you will be surprised how quickly you use up your limited word count.
- (3) The appeal process envisages appeals being focused on providing additional information to establish why the criteria for each category are met. If having reviewed your form you take the view you have more than satisfied the criteria and done so on full evidence based examples, then you will be confined to either giving additional examples or inviting a revisit of your entries. You will in effect be emphasising why you consider the examples given have satisfied the requirement of the category and in short inviting a renewed look at the material already provided.
- (4) You can submit additional evidence to improve/enhance any particular weakness picked out in any competency category. There is no reason why this category cannot include letters as additional evidence from people who can speak with authority on any area you feel is weak or deficient.
- (5) You can submit additional paperwork as it should qualify as additional evidence. This will arise if upon a review of your form you have identified a weak spot in respect of the paperwork

submitted with the original form. But as you will see below you might be able to use paperwork a little more flexibly.

### **Steps before you Appeal**

Before you assemble your appeal material you need to make a hard assessment as to why your original application failed to meet the criteria. Most failures will not be due to some shortcoming on the part of the people doing the assessment. There will have been three persons doing the assessment. They will have conducted the assessment after a careful and collaborative consideration and discussion of the material submitted. They will have reached consensus as to the score when evaluated against a formal marking matrix. So in the majority of cases any failure will usually be due to shortcomings/deficiency within the information provided.

This means any appeal must start by finding the weak spots within your original application. Once the weak spots have been identified you must set out to correct the shortcomings by providing supplementary or additional information either via the form or additional paperwork and/or further information.

It is important you seek a second opinion from somebody, preferably somebody who has participated in the assessment process, as they will know what the CPS grading system is looking for in terms of examples.

### **Correcting the contents of your application**

When reviewing your form be alert to the following most likely omissions/failures:-

**(i) Absence of good examples.**

In my experience of doing the assessments a number of applicants seemed to forget that each category attracted an equal number of marks. So any particularly poor showing in one or more category had the effect of drawing down marks in other categories once the

Don't be surprised if you have failed the categories dealing with PII/Disclosure and 'Appreciation of the role of a Panel Advocate'.

The advocacy and advisory categories were often the areas where people were clearly most comfortable and usually gave at least suitable detail to meet the criteria. However in the subsequent categories the answers tended to be much shorter and therefore there was a poorer presentation of evidence based examples. Thus far on the information I have had back from people these categories are more often than not the failure categories.

**(ii) Examples provided but lack of detail.**

The second area where marks would often drop was lack of detail in the examples provided. On my review of some forms the advocacy and advisory categories had enough information but lacked the narrow and quite specific detail required within these sections to satisfy the example based criteria.

For example within the advocacy category you are required to give an example of cases whereby you can demonstrate some lesson learnt. Applicants would often just list an impressive array of cases involving serious offending and express general views about how the cases were difficult etc but do no more. So there is a deficit in picking out a particular case example and saying why that case

example imparted some important lesson. Try to identify something within a case that was problematic and how you mastered that problem. Just saying I learnt the need to thoroughly prepare a case does not help and is taken as given!

In the categories dealing with PII/Disclosure and ‘Appreciation of the role of a Panel Advocate’ applicants often provided the most general of answers and yet in some ways these sections could on one view be the easiest to answer. If these are failure categories you will need again to be specific on detail. In respect of PII/Disclosure you will need to reach beyond the general knowledge of disclosure etc and highlight some case specific examples that highlight a PII/disclosure aspect that you have had to deal with and resolve. The trickier and more complicated the better. General assertions as to knowledge based on a good caseload do not deliver the answers I am afraid.

In the ‘Appreciation of the role of a Panel Advocate’ applicants would often be too general. This section does not lend itself to case specific examples in the same way as other categories. But it is all about understanding the lexicon of ‘CPS speak’ and how to project it on the back of your experience etc. All government bodies/agencies now have a language all of their own, how many of us have groaned for example when the word ‘stakeholder’ is deployed. You just have to tune in to that language when approaching you correction of any information within this section. Use it sparingly but knowingly.

### **Back to the form**

So go back to your form and ask yourself have I really given enough detail in my evidence based examples to satisfy the criteria set out. The circuit leader persuaded a number of silks to sit on the assessment panels and he will provide the names. If one of those silks is within your chambers do seek his views on your form after you have revisited the contents to get a second opinion as to the form's potential shortcomings and corrections suggested. This will be invaluable because they will all have an idea what the system is seeking by way of information and how applicants can fall short and equally no doubt recall those applicants who submitted suitable answers and thus have their 'eye in' on what is required.

### **How to correct information provided.**

Try to flesh out earlier examples; this may be the most economical approach if you have failure within two or more categories.

Additional information/examples will be permitted but rather than starting completely afresh, a process that can again be word hungry, try to anchor the new material around some entry within your box if at all possible.

Keep in mind, whether by accident or design, you do not end up in effect doing a mark two version of your original application. This is unlikely with the word restriction!

As set out below the provision of additional material from a person with a thorough knowledge of your work may be a means by which you can supplement the constraints of the limited word count on the form.

### **Additional Evidence**

The appeal process states you can submit 'additional evidence'. The aim and purpose of additional evidence is to act as enhanced information to

the appeal and therefore counter balance any weak spot identified within the form. Often the best source of this enhanced information can be letters from people who can provide that additional information although of course you are not confined to letters if you have alternate means of presenting the evidence.

The point of putting in the additional evidence is to address a particular competency and therefore give a first hand confirmation of your qualities within the category chosen. I appreciate the most obvious choice of such additional material would ordinarily be a judge/recorder either on your original form or afresh on the appeal. However getting such further information, especially if a fresh source of information, may be difficult due to judicial reluctance to get involved with the process.

Whoever you choose to provide this information please be aware that getting the balance right requires a great deal of effort, even one focusing on a narrower aspect of your application. You need people who are attuned to the demands of the relatively novel competency based assessment system. This means one liners that the applicant is a 'good chap' or 'first class advocate' is just not good enough.

So choose the author of this important additional evidence with great care. Do make sure the author is able to provide that vital information in sufficient detail to make a difference. This additional material will be an important counterweight to weak spot/s identified by you in the form and therefore has a lot of work to do within in the appeal itself. But again please use this additional evidence with restraint and common sense.

There is no indication that this enhanced/additional material is confined to the referees on your original form. Try your referees on the original form as a starting point and discuss the issues of concern with them to see to what extent they will or can help. If you draw a blank then choose an additional source of information but keep it confined to the narrow aspect or aspects on the form that need correction. If the appeal system permits additional information to correct a weakness in my judgment that must mean you can put in such enhanced information, as you are able to muster, from whatever source.

Finally on this aspect, the enhanced information/evidence (if not from yourself) should be set out in letter form and arguably can be more than one letter per failed category if that is required.

### **Additional Paperwork**

The appeal process seems to allow the presentation of an additional example of your paperwork. The advisory category is the obvious spot where the additional paperwork would be of use in the event of failure. It goes without saying you should have chosen your best examples the first time around but I was surprised how many people put in paperwork such as PCMH housekeeping notes/advice which told the panel nothing of note. Go back over your paperwork and choose paperwork that has truly tested you etc.

The Circuit Leader and I do not think you are confined to prosecution paperwork. The original form stated in the advocacy section that *'experience in defence work is of equal value to prosecuting experience'* when assessing the advocacy category. The same must apply in the advisory category.

If you have some particularly stellar piece of defence paperwork then submit that as your additional document in the absence of any suitable additional prosecution written work but please, please keep in mind two very important features:-

(i) The paperwork should be rendered anonymous to protect the identity of the defendant or parties involved.

(ii) Only submit the paperwork after you have had the express clearance of the instructing solicitor concerned.

Whilst the additional paperwork will primarily be aimed at correcting any shortfall within the advisory category, I would suggest a flexible approach if your shortfall has been within any other category.

You might be able to identify some paperwork, which acts as a boost to some weak entry on the advocacy or PII sections. By deploying such paperwork you again free yourself from the word restraint on the form and permits those limited words to be put to maximum use. As will all aspects of trying to provide additional information use with restraint and care.

**What if you have provided detailed answers but disagree with assessment.**

If you are of the view, and this view is supported/endorsed by the person providing a second opinion of your form, that you have provided more than sufficient detail to meet the criteria then the appeal will be confined to a reconsideration of the original form's contents.

Your appeal will address why you think the assessment panel has not given sufficient weight to the examples provided etc. Don't make this sort of appeal personal; keep it focused on the material in the form and why you are able to say it more than meets the criteria set out. This will in effect invite the appeal panel to consider whether the original panel might have made an error in their assessment or failed to give appropriate weight according to the category criteria. If you feel your points need to be nudged along with some supplementary information keep it brief. But be careful, by appealing you are in effect seeking a second opinion/review on the material already provided and you don't want to appear to be conceding there might be some shortfall in original information provided.

Once you have completed your appeal form and any additional information again it is essential you get a second opinion as to the contents. Somebody standing back from this painful and obviously very personal process will be in a much better position to assist in giving detached advice as whether or not you have provided enough for your appeal.

If there any changes to the appeal process [more than likely] or additional information forthcoming about this process it will be provided.

I hope the above helps in some small way to ease the burden of the appeal process and my best wishes to all of you when you submit your appeals.

Ian Lawrie QC

24 January 2011