

CRITERIA AND GUIDANCE NOTES FOR APIL'S CORPORATE ACCREDITATION SCHEME FOR SOLICITORS' PRACTICES

INTRODUCTION

From the standpoint of the client, going to an organisation that holds itself out as being 'Accredited Personal Injury Lawyers' should mean that the client would find at that office individuals with expertise and experience, and that their matter would be handled by, or under the supervision of, such experts.

Accordingly, an accredited organisation or office should be a place where a potential client can find a well-qualified personal injury lawyer. It should not be a point from which the client is referred elsewhere. Whilst accreditation is of the organisation, rather than an individual, a prime requirement for accreditation concerns the competence of the individuals who will provide the service to the client.

The accredited organisation must be an office open to the public, where an accredited lawyer can be consulted, and all legal work is undertaken by individuals working to recognised standards of competence. For the purposes of the scheme, litigators, senior litigators, fellows and senior fellows are regarded as accredited members. Only senior litigators, fellows and senior fellows are eligible to publicise their accredited membership level.

A telephone advice or referral organisation is not eligible to become an accredited organisation.

Accreditation is by individual office. In many cases, the firm and the office will be the same. However, where a firm has more than one office, only those offices that meet the accreditation criteria may hold themselves out as 'Accredited Personal Injury Lawyers'.

Accreditation is for a period of one year. The accredited organisation is required to reaccredit on an annual basis.

CRITERIA FOR ACCREDITATION

There are four criteria for accreditation:

- The Organisation
- Case Management
- Training and Development
- Personal Competence

In respect of each criterion, a short note of commentary and guidance is provided. This is followed by a statement of evidence that must be available to demonstrate that the criterion is satisfied.

CRITERION 1: THE ORGANISATION

- **The accredited organisation must be a solicitors' practice, or an individual office of such a practice.**
- **The accredited organisation or office must have at least one individual who is accredited as a senior litigator (or higher) for every ten fee earners, and who has personal responsibility for the supervision and management of personal injury work conducted in the organisation.**
- **The organisation or office submits to monitoring of its performance by APIL.**

COMMENTARY AND GUIDANCE

Why must an organisation be a solicitors' practice?

Solicitors and legal executives are subject to statutory rules and requirements of legal professional conduct. In particular, solicitors and legal executives are required to hold professional indemnity cover, and contribute to a compensation scheme that protects client monies.

Personal injury claims can involve substantial sums of money. Adequate indemnity and compensation arrangements must be in place to protect the client.

'Solicitors' practice' includes sole practitioners, partnerships, limited liability partnerships, partnerships between solicitors, legal executives and registered foreign lawyers, and such other forms of practice offering services to the public as may be permitted by the rules of the Solicitors Regulation Authority.

Why must the organisation have a supervisor who is qualified to at least Senior Litigator standard?

The criteria for Senior Litigator status represent the minimum level of competence necessary to head the PI litigation function within a firm. A Senior Litigator is deemed to be competent to work without supervision from another personal injury lawyer, may well supervise a team of lawyers and paralegals, will have responsibility for the assessment and management of risk and, within the framework of the risk management policy of a firm, will usually be self-authorising at all key stages of litigation. Such a person has the breadth and depth of experience to guide the work of more junior fee earners.

This criterion ensures that each organisation or office that is accredited has within it one or more individuals who are in positions of authority, hold the appropriate level of personal injury qualification, and have responsibility for the supervision of personal injury work. A person who holds the senior litigator qualification, but no longer has responsibility for personal injury work, does not satisfy this criterion. Where a practice provides personal injury services through

more than one office, each accredited office must have a senior litigator (or higher), based in that office, who must be responsible for the personal injury work carried out within it.

For the purposes of the scheme, litigators, senior litigators, fellows and senior fellows are regarded as accredited members, but only senior litigators and above are eligible to carry out the supervision responsibilities of this criterion.

Why should an accredited firm be subject to APIL monitoring?

The credibility of a monitoring scheme depends on monitoring of compliance with its requirements. Each year, APIL conducts a small number of monitoring visits to accredited firms. These include inspection of a sample of the files of all fee earners to check on the quality of the legal service provided to ensure that the expectations of Criterion 4 (Personal Competence) are met. APIL provides a model letter that firms may use to secure client consent for such file inspection, to meet the requirements of data protection legislation and rules of professional conduct. Only files in respect of which such client consent is in place will be inspected. (NB It is unlawful for the provision of consent to file monitoring by APIL to be a condition of the provision of legal services. Most clients provide consent, with external monitoring of the quality of legal work being seen as a benefit.)

APIL will continue to monitor training logs. For accredited organisations this will be done on a firm, as well as an individual basis. Firms will be encouraged to make electronic returns, so as to eliminate the cost of paper handling.

APIL will monitor standards of client care, at the point of initial contact, through the use of the “mystery shopper” technique, whereby telephone or personal callers posing as potential clients assess to what extent the organisation adopts a client friendly approach. Feedback will be provided to organisations so monitored.

APIL will accept complaints from clients of accredited organisations. Any emerging pattern of complaints will be discussed with the organisation concerned, and could lead to withdrawal of accredited status.

EVIDENCE

The following evidence must be available:

- i. The organisation is listed on the register of firms of solicitors, or other permitted bodies, maintained by the Solicitors Regulation Authority.
- ii. The organisation or office is listed by the Solicitors Regulation Authority as the practising address of those solicitors and legal executives who are the accredited members named in the application for accreditation.
- iii. The organisation or office seeking accreditation must have within it at least one person who is accredited as a senior litigator (or higher) for every ten fee earners and who has personal responsibility for the supervision and management of personal injury work carried out in the organisation or office.

- iv. An undertaking from a duly authorised officer of the organisation or office that it will cooperate fully with APIL monitoring.
- v. The use of a standard letter to seek client consent for inspection of their file for the purpose of monitoring by APIL.

CRITERION 2: CASE MANAGEMENT

- **The accredited organisation or office maintains high standards of client care.**
- **The accredited organisation or office has effective arrangements for the supervision of all lawyers undertaking personal injury work.**
- **The accredited organisation or office has in place effective arrangements to assure the quality of its legal work.**

COMMENTARY AND GUIDANCE

Why does client care matter?

Complaints about legal services are often concerned with customer service. The reputation of firms, as well as the credibility of a national accreditation scheme, depend as much on client perceptions of how they are treated, as on the technical quality of the legal service provided. Firms of solicitors and legal executives are subject to the requirements of the Solicitors Regulation Authority with respect to client care. This criterion is intended to ensure that accredited organisations maintain standards of client care over and above the minimum expected by professional regulations, which have regard to the nature of personal injury work, and which recognise the vulnerability of many PI clients.

Rehabilitation should be considered at the earliest opportunity.

Firms are expected to offer a free half hour initial consultation to members of the public.

What is effective supervision?

Effective supervision involves the provision of advice on and authorisation of important steps in litigation, as well as more general responsibilities for the management of a team. Supervision should be supportive and developmental and include the provision of mentoring and appraisal, and the identification and meeting of training needs.

Effective supervision depends on the skills of the supervisor (which should be developed through training), on properly documented procedures, and on the span of supervisory control. An individual should not have direct managerial or supervisory responsibility for more than ten people, for example, a Fellow should not supervise more than ten Senior Litigators, a Litigator should not supervise more than ten paralegals. A supervisor needs sufficient time to devote to each of his or her supervisees, as well as having the time necessary for their own caseload or wider management responsibilities.

Effective supervision includes promoting the wellbeing of fee earners and other staff, particularly in relation to mental wellbeing and addressing stress and anxiety. PI work can be stressful, involving as it does dealing with clients who have suffered life changing injury. In addition, PI lawyers can feel misunderstood and unappreciated by society, due to the nature of press coverage of things such as whiplash injury and the cost of clinical negligence cases to the NHS. Promoting staff wellbeing is desirable in itself and makes good business sense as stressed staff are less productive and more prone to making mistakes. Other tangible benefits can include better staff retention and reduced sickness absence. (The organisation LawCare publishes advice on promoting staff wellbeing which is available at <https://www.lawcare.org.uk/files/mentally-healthy-workplaces-download.pdf>)

Within an accredited organisation or office, a supervisor should always be of a higher membership category than the persons supervised; save that there is no requirement within the corporate accreditation scheme for the work of a senior litigator (or above) to be supervised. However, within the staffing structure of an organisation or office it may well be the case that a senior litigator reports to a more senior colleague. Similarly, where an organisation or office has a number of persons accredited as senior litigators or above, one such person may well exercise managerial responsibilities in respect of the others.

Within the organisation as a whole, those with responsibility for strategy and direction (usually the partners or equivalent) should have an understanding of the nature and challenges of personal injury practice and should provide management and leadership that are supportive and developmental.

What does effective quality assurance involve?

Quality assurance depends in part on properly documented processes that are fit for the purpose of progressing matters through the stages of litigation in a timely manner. It depends in part on peer review processes, which enable more than one opinion to be brought to bear on a difficult or unusual case. Seeking a second opinion within the organisation on a difficult point should be seen as normal professional good practice, and not an indication of weakness. Quality assurance depends also on checks and safeguards within the case management system to ensure that matters are progressed timeously, and deadlines are met.

In an organisation with several PI fee earners, peer review is likely to be built into formal mechanisms of internal case review. A sole practitioner should be able to demonstrate that he or she has developed means of seeking views from qualified persons elsewhere, when this is necessary.

The requirement for a “documented process” may be met, in whole or in part, by a computerised case management system. There is a range of such systems on the market, and the nature of individual systems, and the extent to which they have been customised to the requirements of the firm, will dictate the appropriate balance between hard copy (printed) procedure manuals and electronic systems. The test of adequacy of an individual arrangement will be the extent to which all fee earners can access all of the information they require to progress a matter in accordance with the case management policies of the firm. The quality assurance procedures of a firm should be apparent from the way in which files are managed. Specifically:

- There should be a system whereby a random sample of the files of all fee earners is selected for peer or supervisor review, on a periodic basis. APIL's guidance is that approximately one-third of active files should be subject to random review over the course of a year. For example, if a firm has 220 live files and carries out reviews on a monthly basis, six files should be pulled for review each month. If that caseload is distributed evenly between three fee-earners, that would amount to two files per fee earner per month.
- There should be a system whereby the progress of a matter is reviewed at key stages, such as offer received, offer made, no movement within a specified period, proximity to a limitation date, prior to issue of proceedings. Checks on non-movement are of particular importance, as there can be periods of legitimate non-movement in PI cases, for example whilst waiting for a medical condition to stabilise before quantum of damages can be assessed. It is important to be able to check to distinguish between legitimate non-movement and a file on which the fee earner may have a mental block.
- Reviews of progress should not be concerned only with limitation and other deadlines, but also with positive expedition of the matter, with a view of avoiding unnecessary delay.
- Properly documented procedures are in place for the authorisation of key steps in litigation.

A sole practitioner should be able to demonstrate that he or she has arrangements for a small, random sample of files to be reviewed periodically, for example by an employed fee earner within the practice, or by a consultant.

EVIDENCE

The following evidence must be available:

- i. Every accredited member within the organisation has signed an undertaking to abide by the APIL code of conduct and the APIL consumer charter.
- ii. Training in customer care is provided to all staff with 'first point of contact' responsibilities, including telephonists and receptionists, and this is recorded in training logs.
- iii. Files should demonstrate that, where appropriate, early and effective action has been taken to consider rehabilitation options.
- iv. Supervisors are responsible for the direct personal supervision of no more than ten supervisees.
- v. Adequate training in supervision and management is provided to all litigators, senior litigators and fellows with supervisory responsibilities.
- vi. The firm adopts best practice in promoting staff wellbeing and supervisors are effective in recognising and addressing staff stress.

- vii. There is effective and regular appraisal of staff, making use (where appropriate) of the APIL Standards of Competence as a tool to assist in the planning of training and development.
- viii. The senior management of the organisation as a whole is well-informed about and supportive of the personal injury function.
- ix. The organisation or office has properly documented processes for progressing matters through the stages of litigation, in a timely manner. Case expedition is reviewed regularly.
- x. The organisation or office has arrangements in place which enable a second opinion to be brought to bear on a matter, where this is appropriate.
- xi. The organisation or office has arrangements in place for files to be reviewed at key stages, and for a random sample of all files to be reviewed periodically.
- xii. Properly documented procedures are in place for the authorisation of key steps in litigation.
- xiii. Procedures are in place for a review, by a person other than the fee earner, of files on which there has been no movement within a specified period.

CRITERION 3: TRAINING AND DEVELOPMENT

- **The accredited organisation or office makes use of the APIL standards of competence in developing its fee earning staff. It ensures that all of its accredited members and other staff are provided with training and development opportunities to enable them to keep up-to-date, to develop their skills and knowledge, and to meet the needs of clients.**

COMMENTARY AND GUIDANCE

Using the APIL Standards of Competence

APIL accredited firms are entitled to hold themselves out as providing an expert service in personal injury litigation. Specifically, they may describe themselves as 'Accredited Personal Injury Lawyers'. Given this firms should ensure that all of their fee earning staff (whether or not APIL members) develop the competences, appropriate to their roles, which are specified by APIL in its standards of competence.

The APIL standards of competence are designed to provide a developmental 'road map' to take a lawyer from first involvement with personal injury matters to a point at which the organisation can have confidence in the ability of the individual to be self-authorising at key stages in litigation and, where appropriate, to supervise the work of other PI fee earners. This involves the individual first being able to demonstrate the competences of the Litigator standard and then, if regarded as being self-authorising, to demonstrate the competences of

the Senior Litigator standard. Those with broader managerial responsibilities may wish to demonstrate that they meet the requirements of the Fellow standard.

For fee earners specialising in the fields of Accidents and Illness Abroad, Brain Injury, Clinical Negligence, Fatal Accidents, Military Injury, Occupational and Asbestos Disease and Spinal Cord Injury there are additional specialist standards of competence. A standard of competence is available also for Portal Claims Handlers.

The Standards of Competence may be used to inform annual appraisals, identify training needs, and identify areas of practice in which an individual does not yet have experience.

It is hoped that personal injury fee earners will wish to hold APIL membership and, once able to demonstrate the relevant competences, to seek formal accreditation. However, the only requirement of the corporate accreditation scheme for formal individual accreditation is that work must be supervised by an individual of at least Senior Litigator standard. The requirement for corporate accreditation, in relation to the standards of personal competence, is that the standards should be used as the basis of the organisation's staff development for personal injury fee earners.

Keeping Up-to-date

Personal injury law, being litigation based, gives rise to a significant number of leading cases that set precedents. There are also frequent changes of statutory and procedural law, of which all practitioners should be aware. An accredited organisation or office has a particular responsibility to ensure that all fee earning staff are fully up-to-date.

Relevant journals or texts for keeping up-to-date include Current Law, Butterworths Personal Injury Service, Kemp on Procedure and Kemp and Kemp: the Quantum of Damages, JSB Guidelines for the Assessment of Damages, Facts and Figures: Tables for the Calculation of Damages, the APIL/Jordan series of guides, Lexis Nexis and electronic databases such as Lawtel and JustCite. Where texts and journals are available in electronic format, it is acceptable for them to be held by the firm in that way, so long as the licence to use the electronic format enables reasonable access by all fee earners.

Client Care Training

Client care courses should have regard to the responsibilities of individuals. For accredited members who are primarily fee earners, courses oriented towards the personal handling of relations with clients will usually be appropriate. For persons with managerial responsibilities, courses addressing the overall management of client relations and the development of a client care culture within the organisation or office may be appropriate. Client care training should be provided to all staff with 'first point of contact' responsibilities, including telephonists and receptionists. Whether through formal training courses, or on-the-job mentoring, such first point of contact staff should develop awareness of the vulnerability of many PI clients.

EVIDENCE

The following evidence must be available:

- i. The personal development of all fee earners is based upon the achievement of the competences in the relevant APIL standards. For those in general PI these are the Litigator and Senior Litigator standards. For paralegals and others processing claims through the Portal, the Portal Claims Handler standard is relevant. Those undertaking specialist work in areas such as Clinical Negligence should have personal development based upon the relevant specialist standard. The relevant Candidate Portfolio may be used for these purposes, even if it is not intended to submit an individual for personal accreditation.
- ii. All accredited members undertake a minimum of 16 hours APIL accredited personal injury training annually, including attendance on at least one APIL accredited personal injury update course lasting six hours or the equivalent in individual sessions. Personal injury update training must cover the current developments in the four key areas of procedure, quantum, liability and funding.¹
- iii. All accredited members devote a minimum of three hours per month to reading current and relevant case reports and keep a record of this in their personal training logs.
- iv. All accredited members should attend a training course, or take part in developmental activity, designed to maintain and enhance client care, at least once every five years².
- v. All APIL accredited members keep a record of their personal injury training, which includes course attendance, reading, writing and delivering³.
- vi. The organisation subscribes to recognised PI publications and makes these publications available to all fee earning staff.

CRITERION 4: PERSONAL COMPETENCE

- **All fee earning staff within the accredited organisation or office provide advice to clients that is complete and of good quality, take appropriate decisions at key stages of litigation, and maintain their files in good order.**

COMMENTARY AND GUIDANCE

Demonstrating Competence

¹ Senior litigators and above may claim double hours for delivering training. Fellows and senior fellows may claim double hours for writing published articles and books.

² APIL is able to provide details of appropriate courses accredited by it. In addition, relevant courses may be offered by local business organisations, such as Chambers of Commerce, or local colleges. Developmental activities could include work undertaken by a firm in competing for a local or national award in customer care.

³ Please see individual accreditation criteria for what may count towards APIL's 16 CPD hour requirement.

The quality of the service provided to clients depends on both the effectiveness of the systems of the firm (addressed in Criterion 2) and on the competence and expertise of the individual fee earners who deal with each client matter. Criterion 3 addresses the use of standards of competence to develop the skills of fee earners. This criterion is concerned with the demonstration of competence in the handling of client matters.

Through regular file reviews, the accredited organisation or office should satisfy itself as to:

- The quality and completeness of advice given to the client.
- The adequacy of the range of options considered at key stages of litigation, and the appropriateness of the option selected.
- Whether the decisions taken by the fee earner lie within the range of reasonable decisions, having regard to the applicable law, and the facts and merits of the case.
- Whether the file has been maintained in good order and in accordance with the policies of the firm, such that it could be taken over without difficulty, if necessary, by another fee earner.

File reviews are sometimes used primarily as a means of checking compliance with the systems of a firm and ensuring that deadlines are not missed. These are proper and important functions which protect the interests of clients. Securing the best outcome for the client depends also on the quality of the legal decision making by the fee earner. The first three of the above four bullet points address this. Consideration of them, in relation to individual matters, can assist the fee earner in reflecting on their performance, inform appraisal, identify training or mentoring needs, and identify areas in which the fee earner would benefit from widening their experience. Used constructively, file review which focuses on the quality of legal work is a powerful driver of excellence.

EVIDENCE

The following evidence must be available:

- i. The files of all fee earners are subject to review which addresses the quality of the legal work undertaken.
- ii. Such reviews address the four bulleted points in the Commentary and Guidance above.
- iii. Appropriate action is taken to identify training and development opportunities and to address any shortcomings, both to protect the interests of the client and to remedy any inadequacies of performance by the fee earner.