

## APIL Scotland

### Accredited Brain Injury Specialist

An Accredited Brain Injury Specialist (ABIS) is a person who has achieved APIL Senior Litigator status and who has demonstrated further competence in the specialist field of brain injury. He or she is able to manage and progress a brain injury case so as to establish, assert and enforce, in an effective and efficient manner, the rights of a client damaged or disadvantaged by brain injury. He or she is competent to take, without supervision, key decisions on accepting cases, assessing risks, evaluating offers and issuing proceedings.

A person meets the Standard for accreditation if they meet in full the competence requirements for Senior Litigator. In addition, they must demonstrate, by reference to cases handled, the knowledge, understanding, know-how and skills listed below, and that they are able to apply this so as to demonstrate the additional outcomes of effective performance for accredited brain injury specialists.

#### **KNOWLEDGE AND UNDERSTANDING**

To meet the Standard you need to have the knowledge and understanding required for Senior Litigator status, and also knowledge and understanding of the following:

##### **1. The law as it applies to brain injury**

- The law relating to negligence, liability, causation and consent.
- The Access to Health Records Act and the Data Protection Act.
- The Adults with Incapacity (Scotland) Act 2000, including financial and litigation capacity, and the role of a Guardian in the running of a case.

##### **2. Rules of procedure, etc**

- Sheriff Court Summary Application procedures.
- The Rehabilitation Code.
- Guide to the Conduct of Cases involving Serious Injury.

##### **3. The health care sector**

- The structure of the health service, authorities and trusts within NHS Scotland, private providers.

##### **4. Medical knowledge**

- Knowledge of medical reports sufficient to understand what should be contained in a report, to identify material that may be missing from a report and to identify the facts to which the law may be applied.
- Understanding of the nature of a medical record.
- The main types of brain injury and medical terminology associated with these.
- Awareness of less severe injuries and trigger points which could indicate underlying injury or deterioration in condition.
- The main medical specialisms involved in brain injury at consultant level (e.g. neuropsychologists, neuropsychiatrists, etc).

## 5. Behaviours of brain injured persons

- The extent to which brain injury may result in altered behaviours and loss of capacity.
- Understanding of the impact that a brain injured person may have on their family.
- Knowledge and understanding of the circumstances in which instructions should be sought from family members or a personal representative.

## 6. Overall coordination of the case

- Understanding of the role of the solicitor as the lead professional with oversight of all aspects of the case, and as the person responsible for ensuring that arrangements are made for appropriate instructions or consents to be given, by or on behalf of the client, to all medical and legal professionals, and all providers of services to the client.
- Understanding of rehabilitation and specialist case management specific to brain injury; and the right to instruct independent case managers.

## 7. Funding and support services

- Knowledge of funding options for litigation.
- Knowledge of the funding and support for care available from NHS Scotland, Mental Health Services, Local Authorities (social services and housing) and the Department of Work and Pensions.

## THE OUTCOMES OF EFFECTIVE PERFORMANCE

The outcomes of effective performance for the Senior Litigator Standard are grouped in to eleven units, based broadly of the sequence of events in progressing a case. Each unit is made up of a number of elements, each of which in turn reflects a specific function, or a group of related functions.

Set out below are additional elements relating to brain injury cases, in respect of which competent performance must be demonstrated. They should be read in conjunction with the units of the overall Senior Litigator Standard, competence in all of which is required to be an Accredited Brain Injury Specialist.

### 1. Taking initial instructions

To meet the Standard, you must be able to:

- a) Ensure that the client and his/her family have access to benefits to which they may be entitled, arranging a social services assessment if required, and an NHS funding assessment if appropriate.
- b) Arrange for the appointment of a Case Manager under the provisions of the Rehabilitation Code.
- c) Ensure that an appropriate regime is in place to care for the client on discharge from hospital and on an ongoing basis; work with the family to ensure that the client has access to all necessary medical, nursing and other specialist care.
- d) In the event of incapacity, identify the right person(s) to give instructions on behalf of the client; deal with any necessary review of instructions in the event of recovery of capacity by the client.

## **2. Dealing with funding and regulatory matters**

To meet the Standard, you must be able to:

- a) In the event of incapacity of the client, ensure that in respect of the matters dealt with in this unit of the Senior Litigator Standard, the family (if not responsible for issuing instructions on behalf of the client) is kept fully informed.

## **3. Advising the client and managing their expectations**

To meet the Standard, you must be able to:

- a) To ensure that, in the event of incapacity, the general responsibility to advise the client and manage their expectations is exercised in relation to the family of the client, or whoever has responsibility for the client.
- b) Maintain contact with the family, or other responsible carer, to ensure that any fluctuations, deterioration or improvement in the client's condition are reported to you.
- c) Assess when it is necessary to seek further medical advice on changes in the client's condition.

## **4. Planning the case, gathering evidence and making the claim**

To meet the Standard, you must be able to:

- a) Review medical and other evidence to ensure it is consistent with the account you have been given of the injury and, in the event of incapacity, review any discrepancies with the family of the client, or other person providing the account of the injury.

## **5. Dealing with the defendant and other parties**

To meet the Standard, you must be able to:

- a) Make timely application for the appointment of a Guardian, where this is necessary, having regard for the time taken for such appointments to be made.
- b) Maintain an overview of case management provision to ensure it remains in line with the medical and expert evidence in the case.

## **11. Managing post-trial or post-settlement and file closure procedures**

To meet the Standard, you must be able to:

- a) Deal with post-trial procedures to ensure compliance with the Adults with Incapacity (Scotland) Act 2000: Codes of Practice for Guardians
- b) Ensure that suitable arrangements are made in relation to the ongoing investment and management of damages awarded.