

Accredited Clinical Negligence Specialist

An Accredited Clinical Negligence Specialist is a person who has achieved APIL Senior Litigator status and who has demonstrated further competence in the specialist field of clinical negligence. He or she is able to manage and progress a clinical negligence case so as to establish, assert and enforce, in an effective and efficient manner, the rights of a client damaged or disadvantaged by the negligence of a clinical practitioner. 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 skill listed below, and that they are able to apply this so as to demonstrate the additional outcomes of effective performance for accredited clinical negligence 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 clinical negligence

- The law relating to negligence, limitation, liability, causation and consent.
- Investigations by the Crown (FAIs).
- The law relating to Crown Indemnity.
- The Access to Health Records Act and the Data Protection Act.
- The Adults with Incapacity (Scotland) Act 2000.

2. Rules of procedure, etc

- Court of Session/Sheriff Court Procedure for clinical negligence claims.
- Procedure relating to Fatal Accident Inquiries (FAIs).
- Personal Injury Settlement Trusts/Office of Public Guardian.

3. The health care sector

- The structure of the health service, Health Boards within the NHS, private providers.
- The complaints procedures of health service providers and health service regulators.
- The role of medical defence bodies and the Scottish Health Service Central Legal Office.

4. Medical ethics

- The professional rules of the General Medical Council and other professional bodies, and the guidance document "Good Medical Practice".
- Ethical issues relating to drug trials, treatment consent, experimental treatment, and end of life care.

5. 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.
- General human anatomy and the terms used to describe it.

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 clinical negligence 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 Clinical Negligence Specialist.

1. Taking initial instructions

To meet the Standard, you must be able to:

- Establish what the client wishes to achieve, having regard to explanation, apology, disciplinary action against a medical practitioner, etc, in addition to any compensation.
- Establish whether the client's concern has been submitted to a complaints procedure and, if so, the stage it has reached.
- Establish potential targets for a breach of duty claim.
- Establish why the clinical outcome was not as expected, and the trigger for the client's concern.
- In the case of a deceased client, establish whether there has been or will be an FAI.

3. Advising the client and managing their expectations

To meet the Standard, you must be able to:

- Establish clearly the expectations of the client in relation to non-financial outcomes such as apology.
- Advise the client whether, and if so when, to make use of any formal complaints procedure which may be available.

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

To meet the Standard, you must be able to:

- Arrange for the collection, preservation and accurate recording of evidence such as medical records and photographs of injuries.
- Understand medical records, common abbreviations used in such records, and the status and level of responsibility of doctors making entries in records.
- Identify appropriate medical experts in relation to the claim.
- Formulate appropriate questions to medical experts and witnesses to enable their evidence to be interpreted in the light of the law.
- Prepare for and attend meetings with clinicians and other medical witnesses for precognition purposes.
- Establish causation, where appropriate in advance of establishing any breach of duty.
- Explain medical evidence, and its significance in a legal context, to the client.
- Make effective use of FAIs where applicable to gather evidence in fatal cases, and weigh the significance of such evidence.
- Conduct advocacy and examination at FAIs.