

# **APIL Scotland** **Association of Personal Injury Lawyers**

## **Accredited Fatal Accidents Specialist**

An Accredited Fatal Accidents Specialist (AFAS) is a person who has achieved APIL Senior Litigator status and who has demonstrated further competence in the specialist field of the conduct of cases arising out of bereavement. He or she is able to manage and progress a fatal accidents case so as to establish, assert and enforce, in an effective and efficient manner, the rights of a client damaged or disadvantaged by bereavement. 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 fatal accident 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 cases involving bereavement**

- The law relating to negligence, liability, causation and consent
- All current data protection legislation including, but not limited to, the General Data Protection Regulation (2018)
- The Damages (Scotland) Act 2011
- Ability to identify multiple pursuer issues and the quantum issues surrounding family and estate (referral to specific family law or private client practitioners if appropriate)
- Ability to identify novel heads of loss and class of relatives entitled to damages in terms of S4(3) of the Damages (Scotland) Act 2011

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

- The role of the Health and Safety Executive, the police and/or other prosecuting authorities
- The role of the Crown Prosecution Service
- Knowledge and understanding of the role of police family liaison officers (every road death family will have one), liaison with family liaison officers (specific to road traffic cases)
- Knowledge of and the ability to advise on Fatal Accident Inquiries, to attend meetings with the COPFS as well as the Fatal Accident Inquiry itself and the instruction of counsel for a Fatal Accident Inquiry if appropriate
- Knowledge of and the ability to advise on a range of available determinations at the end of the Fatal Accident Inquiry and the sheriff's duty to make determinations to prevent future death
- Fatal Accident Inquiry Procedures

- Basic knowledge of range of offences and sentencing (when dealing with a road death matter)
- Requirements for the appointment of an executor and the need to refer to appropriate bodies for legal advice
- Knowledge of and the ability to advise on relevant limitation periods
- Knowledge of and the ability to advise upon the requirement of court approval regarding settlement when there are minor dependants

### **3. The voluntary sector**

- The role of counsellors, bereavement services and Victim Support

### **4. Medical knowledge**

- Knowledge of and ability to advise upon award for general damages and any pre-death special damages
- Familiarity with post mortem reports
- Ability to advise upon the need for expert witness evidence to address causation, 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
- Ability to advise upon entries in medical records which could indicate underlying condition with the potential to compromise the deceased's life expectancy absent the fatal incident or that of their dependants
- Knowledge of and ability to advise upon appropriate medical expert evidence required to evidence a secondary victim claim

### **5. Supporting bereaved persons**

- The extent to which bereavement may result in altered behaviours and loss of capacity
- Understanding of the impact that bereavement may have on a family
- Knowledge and understanding of the circumstances in which instructions should be sought from family members or a personal representative
- The needs of family in dealing with press/media/social media
- Knowledge of and ability to advise upon secondary victim claims

### **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

### **7. Funding and support services**

- Knowledge of funding options for litigation
- Knowledge of the existence of additional funding and support for the client and the ability to advise upon and/or research additional support from Primary Care Trusts, Mental Health Services, Local Authorities (social services and housing), the Department of Work and Pensions and the voluntary sector

## **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 fatal 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 Fatal Accidents 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 a PCT funding assessment if appropriate;
- b) Ensure that an appropriate regime is in place to care for the client following bereavement and on an ongoing basis; work with the family to ensure that the client has access to all necessary medical and other specialist care;
- c) In the event of potential multiple pursuers, identify the right person(s) to give instructions on behalf of the pursuers; deal with any necessary review of instructions in the event of conflict between potential pursuers.

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

To meet the Standard, you must be able to:

- a) Identify and advise upon cases of limited value (i.e. funeral expenses only and/or S.4(3)(b) bereavement damages and funeral expenses);
- b) 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;
- c) Maintain contact with the family, or other responsible person, to ensure that any fluctuations, deterioration or improvement in the client's condition are reported to you;
- d) 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) Identify and obtain all relevant source documentation to evidence loss of support (income, pension and medical);
- b) Review medical and other evidence to ensure it is consistent with the account you have been given of the incident and injury leading to the death and, review any discrepancies;
- c) Advise upon the calculation of loss of support of income and services.

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

To meet the Standard, you must be able to:

- a) Recognise and act upon the benefit to a bereaved claimant in seeking to obtain an immediate interim payment of S.4(3)(b) bereavement damages and funeral expenses where appropriate;
- b) Seek to maintain close liaison with any prosecuting authorities.

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

To meet the Standard, you must be able to:

- a) Deal with post proof procedures in relation to the management of minor's awards;
- b) Ensure that suitable arrangements are made in relation to the ongoing investment and management of damages awarded.