

# ASSOCIATION OF PERSONAL INJURY LAWYERS SCOTLAND

## Standard of competence for Fellows

### INTRODUCTION

#### Standards of occupational competence

Standards of occupational competence are widely used in many fields of employment. They are based on an analysis of the main functions of a job, and state what it is the job holder must be able to do to perform effectively. That analysis enables an identification of the knowledge, understanding, know-how, skill and behaviour required for effective performance.

A standard is thus, primarily, a business tool. It enables a firm to specify what is required for the effective performance of a job. That specification can then be used as an aid to recruitment or promotion, but it is probably of greatest use in drafting a development plan for an individual who aspires to the role concerned, in appraising the performance of those who hold the role, and in identifying training needs.

#### The Fellow

Pursuer personal injury lawyers act for the victims of accidents, disease and injury, and seek to establish, assert and enforce their rights, in an effective and efficient manner, through negotiation, mediation or litigation. The range of cases, in terms of complexity and legal challenge, is very wide, ranging from minor road accidents to catastrophic multiple injuries, progressive industrial diseases and clinical negligence cases. Whilst financial remedies are important, rehabilitation of the injured person to restore them to as productive and independent a lifestyle as possible, through the use of medical, functional and vocational intervention, is also vital.

Fellow is a personal accreditation status awarded by the Association of Personal Injury Lawyers to its members. It sits in a hierarchy of personal accreditation, and is the second most senior award (Senior Fellow being the only higher award). It differs from the awards of Litigator and Senior Litigator in that its award depends not only on technical competence but also on the professional esteem in which the candidate is held by his or her peers. In addition, the competences required go beyond those needed to manage litigation to embrace the management and leadership competences needed to head a significant personal injury team.

The requirements for Fellowship build on the competences required for Senior Litigator status. 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. To be eligible for Fellowship a candidate must first have secured Senior Litigator status.

A Fellow will be focused on achieving the best possible result for the clients of the firm. As a senior fee earner within a firm, a Fellow will have a good commercial awareness and will understand that a firm must be profitable to be viable, to invest in its services and the development of its staff, and to continue to provide a service to its clients. As a manager, a Fellow will deliver a high quality of client service through the members of his or her team.

A Fellow will be regarded by his or her peers as having a high level of expertise, and will be recognised as being in a position of professional and intellectual leadership in the field of personal injury law.

The Standard thus reflects both professional and managerial leadership skills.

There is no requirement to have served any specified period of time to secure Fellowship status. Realistically, from the point at which Senior Litigator status is achieved, it is likely to take a further five years' experience to develop fully the competence required for Fellowship.

## **The scope of the Standard**

The Standard assumes the legal knowledge, understanding and skill required for Senior Litigator status.

The Standard addresses the circumstances of a person working as a Fellow in an office of a firm of solicitors.

The Standard goes beyond the litigation function to deal with management and leadership responsibilities. The section of the Standard dealing with management of a personal injury team is partially adapted and abridged from the National Occupational Standards for management and leadership published by the Management Standards Centre in 2004 and 2008 (<https://www.managers.org.uk/education-and-learning/professional-standards/>). For Fellows who conduct their own advocacy, reference should be made to the Code of Conduct for Solicitor-Advocates, issued by the Law Society of Scotland.

A firm of solicitors is subject to all of the standards of professional conduct published by the Law Society of Scotland, and may be covered also by the standards of the APIL Corporate Accreditation Scheme.

Nothing in the Standard is inconsistent with any of these other standards or requirements.

## **APIL accreditation**

A separate guide is available on the use of the Standard in determining eligibility for personal accreditation as a Fellow.

## THE STANDARD

A Fellow is an experienced legal practitioner:

- who has a high level of technical expertise in personal injury law, including trial procedures;
- who is recognised by his or her peers as being in a position of professional and intellectual leadership in the field of personal injury law; and
- who is competent in the management of a personal injury team.

### PART 1: TECHNICAL EXPERTISE

A Fellow must meet all of the criteria for the Senior Litigator standard, and must have direct evidence of competence in the elements of the standard relating to the management of proofs or jury trials.

Units 10 and 11 of the Senior Litigator standard deal with “Preparing for and managing the proof or jury trial” and “Managing post-proof or trial or post-settlement and file closure procedures”. Given that very few personal injury cases now go to court, a candidate for Senior Litigator status may be exempted from the requirement to provide direct evidence of competence in elements 10d, 10e, 10f, 10g, 10i, 10k, 11a, 11b and 11c. Instead, evidence of attendance on relevant training courses, and observation of court proceedings in a civil litigation matter may be accepted. Course attendance may also be permitted in lieu of direct evidence of drafting pleadings, as it is the practice of some firms always to instruct counsel on these matters. However, for a Fellow to be recognised as having professional leadership in the field, direct experience of all forms of drafting, and of cases proceeding to trial is required.

A candidate for Fellowship must have evidence of competence in the following elements of the Senior Litigator standard gained through direct experience. Trial experience must relate to trials on both liability and quantum:

To meet the standard, you must be able to:

- a) draft Summons or Initial Writ;
- b) draft other aspects of the pleadings;
- c) actively manage the proof or trial date to ensure the availability of counsel, witnesses and experts, notify these and your client of the proof or trial dates set, and the times within the trial period at which their attendance may be required explain to your client and witnesses the proof or trial process, and what will be expected of them;
- d) ensure that any Inventories of Productions contain all necessary documents, are arranged according to court rules and practice directions, and lodged within the court timetable;
- e) ensure that counsel is instructed in good time;
- f) ensure that appropriate arrangements are made to deal with the special circumstances of a client who is a child or is incapable, or who has a disability;
- g) keep under review the level of expenses and outlays, the adequacy of the level of insurance cover, and the need for any necessary authority to proceed;
- h) ensure that full notes are taken of all court hearings;
- i) explain to your client the progress of the hearing and the judgement of the court.

## PART 2: MANAGING A PERSONAL INJURY TEAM

### **i) Managing people and their work**

To meet the standard, you must be able to:

- a) Ensure that a properly documented process is in place which is fit for the purpose of progressing matters through the stages of litigation in a timely manner, and that this process is fully understood by all fee earners and support staff;
- b) Ensure that all fee earners and support staff have personal work objectives, and understand how these contribute to the success of the department and the firm;
- c) Allocate cases to fee earners on a fair basis, having regard for their skills, knowledge and experience, their workload, and opportunities for development;
- d) Brief fee earners on the work allocated to them, and the standards of performance expected of them;
- e) Encourage fee earners to ask questions and seek guidance when needed on cases allocated to them;
- f) Develop a culture of openness which allows problems to be discussed;
- g) Check on the progress and quality of work undertaken by fee earners through the review of files at key stages, and periodic random review of a sample of files, and provide constructive feedback;
- h) Ensure that all fee earners are aware of the extent of their personal authority to proceed at key stages of litigation, and of steps for which the authorisation of yourself or a team leader is required;
- i) Ensure that appropriate arrangements are in place to identify files on which there has been no movement in a specified period, and check on progress of these;
- j) Support fee earners in identifying and dealing with problems and unforeseen events;
- k) Motivate all staff to complete their allocated work to a high standard and to adopt high standards of client care, providing appropriate praise for good performance;
- l) Identify unacceptable or poor performance, discuss the causes of this with the individual concerned, and agree ways of improving performance;
- m) Steer your department successfully through difficulties and challenges, including conflict within the department.

### **ii) Planning the work of the team**

To meet the standard, you must be able to:

- a) Contribute to the overall strategic and operational plans of the firm so as to place the personal injury practice in the context of the total services provided;
- b) Develop realistic and affordable plans for the marketing of the department and the acquisition of work;
- c) Monitor and evaluate trends and developments relating to personal injury work and its financing, and use these in predicting and planning for the future workload of the department;
- d) Obtain, from a wide variety of sources, information on potential clients and current or future competitors, and use the information to support planning and decision making;
- e) Explore and assess a range of future scenarios in the legal, social and political environments in which personal injury work is conducted, identify the opportunities and threats these scenarios present, and assess the strengths and weaknesses of the department in relation to them;
- f) Develop a workforce plan to match the skills and experience of fee earners to likely future volumes, levels and types of personal injury work;
- g) Ensure that a range of funding options is in place and maintain good relations with funders;

- h) Establish service level agreements with providers of services (including after-the-event insurers) to your department;
- i) Ensure the availability of appropriate IT support to fee earners; set up and maintain databases of counsel and experts.

### **iii) Managing the budget**

To meet the standard, you must be able to:

- a) Evaluate information on volumes and types of personal injury work undertaken, and on costs of acquiring and completing work, so as to prepare a realistic budget for the department;
- b) Discuss and agree the budget in accordance with the firm's procedures;
- c) Monitor actual performance against budget in a regular and systematic manner, including time written off; monitor the recovery of chargeable time;
- d) Identify the causes of any significant variances between budget and performance, and take prompt corrective action, including agreeing budget revisions where appropriate;
- e) Gather information from implementation of the budget to assist in the preparation of future budgets;
- f) Ensure that there is full and documented risk assessment of any case in which the funds of the firm may be at risk, and that risk accepted is within any limits set by the firm. Monitor the progress of cases to identify changes in risk, and re-assess these;
- g) Establish, and monitor compliance with, a policy on the level of disbursements that may be carried on office account and also the level of work in progress (WIP);
- h) Manage cash-flow by ensuring that fee earners bill promptly for costs and the recovery of disbursements; and by taking a pro-active approach to the time taken to progress matters.

### **iv) Developing your people**

To meet the standard, you must be able to:

- a) Identify the nature and level of legal specialisms required to undertake current and planned future work;
- b) Review the capacity and capability of current fee earners and support staff to meet current and future requirements, and prepare and implement departmental development, training and recruitment plans to bridge any gaps;
- c) Ensure the development of client care skills in all fee earners and support staff;
- d) Provide all staff with fair, regular and useful feedback on their work performance, discussing and agreeing how they can improve. Make effective use of the firm's appraisal systems;
- e) Identify and prioritise the job-related learning and development needs of individuals, and agree individual learning and development plans to meet these;
- f) Make full use of learning opportunities arising naturally from the working environment;
- g) Evaluate, in discussion with individuals, the value of learning activities undertaken and use this information in planning future spend on learning activities;
- h) Encourage the sharing of knowledge and know-how within the team;
- i) Ensure that full use is made of computerised and other knowledge management systems within the department, to aid efficient working and to promote learning;
- j) Actively review all complaints and insurance notifications and take appropriate action to learn from these so as to improve individual and team performance.

## PART 3: PROFESSIONAL AND INTELLECTUAL LEADERSHIP

### **i) Sharing expertise**

To meet the standard you must demonstrate a practical commitment to sharing knowledge, know-how and expertise, within your firm and in the profession more widely, so as to help build the overall competence and professionalism of the practice of personal injury law.

Evidence is likely to come from:

- Lecturing, conducting seminars or webinars, and other direct teaching;
- Publication of articles in legal journals, in general publications explaining aspects of PI law to a lay audience, in text books or other learning materials, of submissions to commissions or other public bodies on PI law;
- Development of the precedent systems of a firm.

### **ii) Leading litigation**

To meet the standard you must demonstrate that you function as a leader in the field of personal injury law. You should be able to show that:

- you deal personally with the more difficult cases which present new or unusual problems;
- you are consulted for your depth of specialist expertise by legal practitioners who are themselves of established standing in the field;
- you undertake work on referral from other firms or less experienced colleagues;
- you undertake risk analysis and risk management in relation to complex cases, which may include multi-party cases.

## BEHAVIOURS WHICH UNDERPIN EFFECTIVE PERFORMANCE

1. You seek constantly to improve performance.
2. You reflect regularly on your own and others' experiences, and use this to inform future action.
3. You set demanding but realistic objectives for yourself and others.
4. You encourage and support others to make the best use of their abilities.
5. You take and implement difficult or unpopular decisions, where this is necessary.
6. You respond quickly to crises and problems with a considered course of action.
7. You present information clearly, concisely, accurately and in ways which promote understanding.
8. You adapt your communication and leadership styles to different people and situations.
9. You recognise changes in circumstances promptly, and adjust plans and activities accordingly.
10. You take personal responsibility for making things happen.
11. You recognise and value diversity.