

Guidance on assessments for Accredited Junior Counsel in Personal Injury

1. Introduction

Accredited Junior Counsel in Personal Injury (AJCPI) is a personal accreditation status awarded by the Association of Personal Injury Lawyers. A candidate for AJCPI status must demonstrate that they meet the Standard of Competence for AJCPI. This will involve assessment against the Outcomes of Effective Performance contained within the Standard.

In the case of personal accredited statuses awarded by APIL to persons working in firms of solicitors, assessment is usually integrated with the normal supervision and management of a fee earner. Evidence of competent performance comes from the day to day work of the candidate. The judgements required to assess competence are the same judgements that a firm should be making in deciding on the extent to which a fee earner is ready to work unsupervised, to supervise the work of others, or to be self-authorising at key stages of litigation.

In the case of members of the bar working from chambers there is not usually an equivalent supervisory structure, nor is there a requirement for the work of a barrister to be checked and authorised at key stages in litigation. Accordingly, evidence from referees provides the main independent evidence of competence in relation to the standards.

This guidance, and the Standard to which it relates, is intended to enable referees to provide evidence of competent performance in a structured, reliable and defensible way, and to provide guidance to candidates on what is expected of them.

2. Who can be a referee?

A referee must be a person with substantial personal knowledge of the professional work of the candidate and must be competent to make judgements about the professional skills, knowledge and behaviour of the candidate. It is likely that more than one referee will be needed to cover all aspects of the Standard; in any event APIL requires a minimum of two referees.

A referee is likely to be:

- A senior member of the chambers in which the candidate works, who has worked with the candidate on PI cases
- A judge before whom the candidate has appeared regularly on PI matters
- A member of a firm of instructing solicitors who holds personal accreditation as a Senior Litigator or above
- A barrister who has appeared regularly on the other side from the candidate
- An expert witness with experience of the candidate's work
- Leading counsel with whom the candidate has appeared as a junior

As a prime purpose of the accreditation scheme is to assist solicitors in identifying expert counsel to instruct, at least one referee must be an instructing solicitor holding APIL Senior Litigator status or above.

In considering whether they have sufficient knowledge of the work of the candidate to act as a referee, the individual concerned should review the Portfolio to satisfy themselves that they are able to report fully on a reasonable proportion of the competences listed. It is not expected that a single referee will necessarily be able to report on every competence, and some referees (e.g. expert witnesses) may be able to report on a limited range of competences only. Between them, referees must cover all of the competences which make up the Standard, and it is the responsibility of the candidate to identify referees who are able to do this.

The table annexed to this guidance suggests the professional background of persons who might act as referees in relation to each of the units of the Standard.

3. Background

The Standard

This Standard is the first of a series of three which reflect the competences expected of counsel specialising in personal injury litigation at different levels. Whilst some functions will usually be undertaken only at the higher levels, a significant number of functions relate to court proceedings at all levels. In assessing competence regard should be had to the context in which it should be demonstrated. For this Standard the context is defined by the following statement of the overarching competence which must be demonstrated:

The candidate must be competent to progress all stages of a fast track case from the start of process (advising on merits and pleadings) to trial advocacy in the county court,

The candidate

In the first two years following call, most barristers are likely to act in a wide range of relatively straightforward cases. Thereafter, they are likely to become more selective in the types of work they undertake and may choose personal injury and/or clinical negligence work as one such field. The amount of experience required to satisfy the Standard from the point of selection of this type of work is unlikely to be less than the equivalent of three years' with 50% of time spent on personal injury and/or clinical negligence cases. This does not mean that a candidate must spend 50% of their time on personal injury work, but a lower proportion of time is likely to mean that a longer period will be needed to demonstrate competence.

In most cases the candidate will undertake work in other areas which use some of the same, or similar skills to those required in personal injury or clinical negligence litigation. Whilst evidence should come primarily from personal injury and/or clinical negligence cases, supporting evidence of competence in generic skills such as the conduct of examination in chief and cross examination, and witness handling generally may be available from other areas of the candidate's practice.

There is no requirement for the candidate to have experience of, or to demonstrate competence in the handling of multi-track matters. Nevertheless, it is likely that at the point of final assessment against the Standard a candidate will have started to gain experience of multi-track work, for example, through acting in the preliminary stages of such cases.

4. Evidence of competent performance

Where to find evidence

The Standard sets out the functions in which a barrister is likely to be involved in handling a personal injury claim, in a broadly sequential manner. It is divided into five units, each dealing with a stage in the litigation process. Each unit is sub-divided into elements addressing a function, or group of closely related functions. The primary evidence that a candidate has undertaken each function, has done so to a satisfactory standard, and has done so on a sufficient number of occasions to develop the depth of understanding to be able to handle the unusual or the unexpected, will come from referees who have personally observed the work of the candidate through their own professional involvement in matters handled by the candidate.

Evidence of effective performance should arise naturally from the work of the candidate, as observed by the referee. In relation to each function, the referee must be satisfied that the candidate has carried it out, has done so properly, and has done so consistently. The referee should be able to attest to performance which would enable a confident recommendation of the candidate to be made to a firm of solicitors seeking advice on whom to instruct in fast track cases. This means that the referee is looking for more than a single example that a function has been properly undertaken; what

is sought is confirmation of consistent performance over a period of time, preferably over a range of types of case, and in a sufficient number of cases to make it likely that most of the problems and challenges which can arise have been encountered and dealt with.

Opportunities for referees to gather evidence of competent performance will arise from events in the litigation process in which other professionals, who might be asked to act as referees, will be present. A table is appended which suggests the professional backgrounds from which referees might be drawn in relation to each unit of the Standard.

Assessment should not take place too soon. A barrister is likely to be ready to be assessed against the AJCPI Standard once he or she is regularly instructed by firms of solicitors in fast track cases. As noted above, this point is unlikely to be reached before a barrister has at least the equivalent of three years' experience with 50% of time spent on personal injury and/or clinical negligence cases. On the other hand, early opportunities to demonstrate competence in relation to matters which arise less frequently should not be missed.

Two matters arise from this. First, candidates should use the Outcomes of Effective Performance section of the Portfolio to record brief details of cases which enabled them to demonstrate competence in relation to a function. This record should then be used in discussion with a referee to support the evidence arising from the referee's personal observation of the work of the candidate. Second, it is sensible to identify, some time in advance of making an application, the persons who might act as referees. This enables a referee to keep their own notes on the performance of the candidate, over time. In addition, a referee may play a mentoring role, advising a candidate if there are areas in which it would be desirable to gain further experience, and suggesting when the point has been reached at which an application would be appropriate.

It is desirable that evidence should come from more than one type of case (e.g. employer's liability, public liability, industrial disease, etc.). It is recognised that some chambers specialise in a small number of types of personal injury case (e.g. clinical negligence, brain injury, etc.). In such cases evidence can come from those types of work alone but must demonstrate full competence across all of the functions.

The overarching statement of competence relates to progressing all stages of a fast track case. In seeking evidence of this the nature of instructions likely to be received by candidates should be borne in mind. It is fairly unusual for a barrister at this level to have conduct of an individual case from start to finish. Availability on the date when a matter is listed for hearing will often determine which barrister appears. For example, the barrister who appears in an interlocutory matter may not appear at final trial, and the barrister who appears at final trial may not have appeared in any preliminary hearing. There must be evidence of competence in all the functions involved in a fast track trial, but this does not have to come from cases in which the candidate has handled every stage.

Knowledge, understanding and know-how

Referees need to be able to confirm not only that a function has been undertaken, but that it was done properly. To this end, the referee must be able to confirm that the candidate understood what they were doing and why, and did not just happen to do the right thing by luck. Whilst it would not be appropriate for a judge to discuss a case with the candidate, other professional referees may be able to do so and to question why a particular course of action was proposed or taken. This is no different to the discussion an instructing solicitor would expect to have anyway with counsel when considering a case with them. This type of questioning allows the referee to be satisfied that the candidate has the necessary knowledge, understanding and know-how to enable them to operate properly, and to deal with the unusual or unexpected.

Assessing particular types of function

Matters which referees should take into account in commenting on performance against particular types of function include the following:

- In relation to advising on the merits of a case (for example 2 (a), 2(b), 3(ii), 3(iv)(b)) the referee should consider whether there is evidence that the candidate consistently assesses

all necessary and relevant evidence, applies the relevant law to the facts, and identifies and makes appropriate use of any relevant precedents

- In relation to advising on the tactics of handling litigation (for example 3(iii)) the referee should consider whether there is evidence that the candidate has fully considered the advantages and disadvantages of the available courses of action, in relation to the law, the evidence, and the interests of the client, and then selected the course of action most likely to secure the best possible outcome for the client. In doing this the referee should bear in mind that there may be more than one appropriate course of action. The test is not whether the candidate has selected the course of action that the referee would have chosen, but that the decision or proposal was reached through a sound process of reasoning based on the law, the evidence and the client's interests.
- Whilst many fast track cases are straightforward, some will give rise to difficulty or complexity. It is soundness of reasoning which should give the referee confidence that the candidate is able to handle such difficulties and complexities that can arise at this level. It follows that candidates should be ready to point to cases in which they have dealt with complex or difficult issues. Examples of complexity in fast track cases may include dealing with novel and difficult points of law, difficult clients or opponents, inconsistencies in evidence, multiple defendants, low velocity impacts in road traffic accidents, etcetera. This list is illustrative only; it is for the candidate to provide examples that illustrate competence in handling complexities and difficulties that can arise in fast track cases.
- The overarching competence which the Standard seeks to assess is the ability of the candidate to progress a fast track case from the start of process to trial advocacy in the county court. This will include appearance in early interim hearings which may involve such things as allocation, costs budgets, pre-action disclosure and interim payments. The Standard does not list such individual types of interim hearing as specific requirements. The Standard requires a holistic judgment of the ability of the individual to conduct all stages of fast track cases. Most candidates will have experience of most such interim hearings; however the absence of experience of an interim hearing of a particular type is not a disqualification if competent performance in other types of interim hearing allows an inference of general competence in the conduct of interim hearings to be drawn. This reflects the reality that in some chambers more junior barristers may not have the opportunity to undertake every type of interim hearing.
- It is a characteristic of personal injury work at this level that a barrister must be able to advise on the availability of options for resolving a matter, even if the conduct of, for example, a multi-track trial, application for a provisional damages award or periodical payments, joint settlement meeting, or ADR event might be undertaken by a more senior colleague. Matters on which a candidate must be able to advise are dealt with in outcomes 1, 2 and 3. Of these matters, those which the candidate must be able to conduct personally are determined by the scope of outcome 5 (court advocacy and other oral representation). Where advocacy and other oral representation falls within the scope of Outcome 5, the candidate should be able to demonstrate they have acted as advocate; it is not enough that the candidate should be merely aware of how proceedings should be conducted. On other matters the candidate should be able to demonstrate possession of the necessary knowledge and understanding to advise and should be able to point to instances in which their advice extended to those matters. Outcome 1.d) (identify the circumstances in which it may be appropriate to instruct a more senior colleague or leading counsel) and Behaviour 3 (awareness of the limits of your own knowledge and competence and referring on matters which are outside your expertise) are relevant in a candidate's determination of whether it is appropriate to go personally beyond advising on the availability of options.

4. Satisfying the Standard

In relation to the elements under each unit of the Standard in respect of which the referee is able to comment, the referee should ask themselves:

- ***Do I have evidence that the candidate has carried out all of these functions satisfactorily, in relation to a reasonable number of fast track cases, preferably over a range of types of case?***
- ***Would I be willing to recommend this candidate to a firm of solicitors as a person able to perform these functions competently in all types of fast track cases?***

If the answer to either of these questions is “no”, then the candidate is not yet fully competent. Further experience will be required, together with training, mentoring or guidance on carrying out the functions in question, before a further assessment is made.

If the answer to both of these questions is “yes”, then the referee can certify the candidate as competent in relation to the elements of the unit in question.

There is no separate assessment of possession of knowledge and understanding, or of know-how. A person who lacked the necessary knowledge, understanding or know-how would be unable to carry out the listed functions satisfactorily. A weakness in knowledge, understanding or know-how might lead a referee to the conclusion that they did not have evidence that the candidate had carried out the functions satisfactorily, or that they would not be willing to recommend the candidate to a firm of solicitors. In that event, the candidate should be advised of the shortcoming, and it should be addressed by the candidate undertaking further training and/or acquiring further experience before reapplying.

Whilst knowledge and understanding are assessed as a part of a holistic appraisal of performance against individual standards, it may help referees and candidates for the candidate to keep a note of cases where relevant knowledge and understanding was demonstrated, or relevant training events attended.

The behaviours which underpin effective performance should also be demonstrated in relation to relevant elements of the units of the Standard. However, referees are asked additionally to confirm that, from their observation of the candidate, they have seen evidence that all of the behaviours are displayed. To do this, the referee should ask themselves:

- ***Can I point to instances where each of these behaviours has been displayed?***

If the answer is “no”, the candidate is not yet fully competent. Further experience will be required, together with guidance and mentoring on developing appropriate behaviours.

If the answer is “yes”, then the referee can certify that the candidate demonstrates the required behaviours.

5. Using the Portfolio

If the candidate considers that a case he or she has handled provides evidence that an element of the Standard has been met, brief details of the matter should be entered into the Outcomes of Effective Performance section of the Portfolio, together with the date that the relevant task was undertaken. Remember that effective performance against the Standard must be demonstrated on more than one occasion. Similarly, the referee should keep a record of cases where he or she has observed effective performance by the candidate.

Copies of the original Portfolio must be retained by the candidate and referees, and submitted to APIL in support of a candidate's application for AJCPI status.

6. Quality assuring assessment decisions

APIL may, from time to time, invite a suitably qualified person (either an APIL Senior Fellow or a QC specialising in personal injury work) to review a sample of assessment decisions, to ensure that accreditation decisions are being taken consistently and the personal accreditation scheme remains credible.

Persons suitable to act as referees

The table below suggests the professional background of persons who might act as referees in relation to each of the units of the Standard.

Unit of Standard	Appropriate Referee
1. (Accepting Instructions)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Senior member of candidate's chambers who has worked with the candidate on PI matters.
2. (Advising – general)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Senior member of candidate's chambers who has worked with the candidate on PI matters. • Leading counsel with whom the candidate has appeared as a junior.
3. (i),(ii) and (iv) (Advising – specific issues)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator Status. • Senior member of candidate's chambers who has worked with the candidate on PI matters. • Leading counsel with whom the candidate has appeared as a junior.
3. (iii) (Advising – specific issues)(pre-trial procedures)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Senior member of candidate's chambers who has worked with the candidate on PI matters. • Barrister who has appeared regularly on the other side from the candidate. • Judge before whom the candidate has appeared regularly on PI matters.
4. (Drafting)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Senior member of candidate's chambers who has worked with the candidate on PI matters. • Barrister who has appeared regularly on the other side from the candidate. • Judge before whom the candidate has appeared regularly on PI matters. • Leading counsel with whom the candidate

	has appeared as a junior.
5. (i) (Court advocacy)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Senior member of candidate's chambers who has worked with the candidate on PI matters. • Barrister who has appeared regularly on the other side from the candidate. • Judge before whom the candidate has appeared regularly on PI matters. • Leading counsel with whom the candidate has appeared as a junior.
5. (ii) (other oral representation)	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Barrister who has appeared regularly on the other side from the candidate.
3 (iii) (i) and (l) only 5 (iv) only	<ul style="list-style-type: none"> • Expert witness with experience of the candidate's work.
Behaviours	<ul style="list-style-type: none"> • Instructing solicitor holding Senior Litigator status. • Senior member of candidate's chambers who has worked with the candidate on PI matters. • Barrister who has appeared regularly on the other side from the candidate. • Judge before whom the candidate has appeared regularly on PI matters.