

Association of Personal Injury Lawyers

Accredited Military Injury Specialist

An Accredited Military Injury Specialist (AMIS) is a person who has achieved APIL Senior Litigator status and who has demonstrated further competence in the specialist field of military injury claims. He or she is able to manage and progress a military injury case so as to establish, assert and enforce, in an effective and efficient manner, the rights of a client damaged or disadvantaged by an injury suffered whilst serving within the military and/or as a result of negligence by the Ministry of Defence. He or she is competent to take, without supervision, key decisions on accepting cases, assessing risks, evaluating offers and issuing proceedings and/or undertaking the necessary work/directions/procedures towards trial.

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 military injury specialists/practitioners. To be clear it is recognised that civil practitioners will not have directly acted for military clients in all aspects of (1) and (2) below, however, they must be able to demonstrate a clear understanding of the same.

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 injuries suffered in the course of military service and/or as a result of negligence by the Ministry of Defence to include (but not limited to):

- Crown Proceedings Act 1987
- The common law doctrine of combat immunity
- The Armed Forces Compensation Scheme
- The Human Rights Act in relation to fatal cases
- Armed Forces pension schemes
- Regulations relating to War Pensions abatement
- Effect of GIPs/AFCS award(s) on any Civil Settlement(s) (abatement policy)
- The law relating to negligence, liability, causation and limitation in both personal injury and clinical negligence claims
- The Access to Health Records Act and the Data Protection Act/GDPR requirements
- The Mental Capacity Act, including financial and litigation capacity, and the role of a Deputy in the running of a case

2. Understanding of the Ministry of Defence and their procedures relating to:

- Their nominated claims handlers (pre issue)
- Service of proceedings (as per the CPR)
- Military inquest procedures
- Service complaints
- Boards of Inquiry
- Courts Martial
- Ministry of Defence practices and procedures, including joint services publications on injury
- Military career pathways
- Royal Military Police/SIB reports
- AFCS Tribunals
- The Rehabilitation Code
- Guide to the Conduct of Cases involving Serious Injury (Multi-Track Code)
- Different jurisdictions
- Different limitation period(s)
- Making timely application(s) for pre action and/or specific disclosure

3. Military Joint Service Publications (JSPs)

- To have an understanding/be familiar with the MoD's JSPs and internal policies and have the ability to apply them to a claim to help establish liability

4. Military medical services

- Understand the structures of the military disclosure departments/teams and/or health providers: primary care – medical centres, Departments of Community Mental Health Services (DCMH) and secondary care and rehabilitation through the Headley Court Defence Medical Rehabilitation Centre and/or DMRC Stanford Hall (MoD)
- A practitioner should understand the different disclosure processes depending on whether the claimant is still serving or has now been discharged from the military

5. Medical knowledge

- Knowledge of armed forces personnel files & military medical records (FMed 4, 9 & 23 etc.) sufficient to understand what should be contained in a file and to identify any material that may be missing
- Understanding the abbreviations used in military medical records/ personnel files. To have a good understanding of the PULHHEEMS guidance.
- The ability to instruct the most suitable military expert(s) depending on the nature of the claim, given that military claims can include both personal injury and clinical negligence
- 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

6. Expert knowledge

- The ability to instruct the most appropriate expert(s) and understanding the importance of the same e.g. an employment expert with military experience/knowledge depending on the nature of the claim in particular as loss of earnings is often the most sizeable part of any military injury claim.

THE OUTCOMES OF EFFECTIVE PERFORMANCE

Set out below are additional elements to that of the outcomes of effective performance for the Senior Litigator Standard relating to military claims, in respect of which competent performance must be demonstrated. This 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 Military Injury Specialist.

1. Taking initial instructions

To meet the Standard, you must be able to:

- a) Identify hybrid military claims, for example, NFCI case(s), with a potential claim for bullying and harassment and have the ability to bring both together and advise on the time limits accordingly, to include that of the AFCS scheme;
- b) In the event of death, ensure that the appropriate person is identified to bring the claim e.g. the Executor of the Estate (in the event of a will);
- c) 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 of the client.

2. Dealing with funding and regulatory matters

To meet the Standard, you must be able to:

- a) Explain funding to a client with a mental health injury, but with capacity, to ensure that they fully understand the funding arrangements;
- b) 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/providing instructions on behalf of the client) is kept fully informed, as appropriate.

3. Advising the client, managing their expectations, mediation and alternative dispute resolution

To meet the Standard, you must be able to:

- a) Advise on AFCS abatement and reporting obligations to the Veteran's UK/agency;
- b) Advise on mediation/ADR/JSMs/independent evaluations as an alternative to trial.

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

To meet the Standard, you must be able to:

- a) Obtain evidence (including the personnel file and medical records) from overseas locations, including combat zones;

- b) Access records from the Royal Military Police, Boards of Inquiry, service complaints and inquest disclosure (where applicable);
- c) Have a clear understanding of the military promotion structure, including benefits and pensions (and what disclosure is required in relation to the same);
- d) 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, if appropriate.

5. Dealing with the defendant and other parties

To meet the Standard, you must be able to:

- a) Understand the rules in respect of naming the Ministry of Defence on the Claim Form for issuing proceedings and the correct address for service as per the CPR;
- b) Understand the role of TopMark Claims Management and/or the Government Legal Department;
- c) Work with pre-action representatives/insurers and departments to serve the Letter of Claim, etc.

8. Drafting documents

To meet the Standard, you must be able to:

- a) Understand the impact and safeguard Service Invaliding Pension/GIP/AFCS/AFIP in Consent/Tomlin Orders;
- b) Understand how to apply the Ogden tables in relation to these claims.

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

To meet the Standard, you must be able to:

- a) Ensure that the client and family have access to military charities/organisations for onward support and assistance, if requested/required. Have the knowledge of such charities and organisations;
- b) Ensure that suitable arrangements are made in relation to the future investment of the damages award and protection of the same by way of a PI trust, etc.