

Association of Personal Injury Lawyers **Scotland**

Accredited Occupational Disease Specialist **Accredited Asbestos Disease Specialist**

An Accredited Occupational Disease Specialist (AODS) is a person who has achieved APIL Senior Litigator status and who has demonstrated further competence in the specialist field of occupational disease. He or she is able to manage and progress an occupational disease case so as to establish, assert and enforce, in an effective and efficient manner, the rights of a client damaged or disadvantaged by occupational disease. He or she is competent to take, without supervision, key decisions on accepting cases, assessing risks, evaluating offers and issuing proceedings.

A sub-specialism in the occupational disease field concerns disease resulting from exposure to asbestos, especially mesothelioma. To enable members of the public to identify practitioners with the additional skills and experience to handle such cases the Standard includes a number of additional requirements. If these are met a practitioner may hold themselves out as an Accredited Asbestos Disease Specialist (AADS).

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 occupational disease practitioners. If accreditation is sought also as an AADS the additional elements of the Standard relating to disease caused by exposure to asbestos must also be met.

In this Standard, the additional requirements for AADS status are shown in *italics*.

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 occupational disease

- The law relating to limitation, breach of duty (negligence and statutory) and causation.
- Company law and TUPE as it relates to tracing current, parent and predecessor companies.
- Employment law relating to the status of an individual as an employee or self-employed contractor.
- Insurance law, including enforcement.
- Fatal Accident Inquiries procedure.

2. Rules of procedure, etc

- The Disease Pre-action Protocol.
- *Procedure in mesothelioma cases.*
- *Provisional Damages.*
- *Procedure in Pleural Plaque cases.*
- *Procedure to be followed when a client dies before the conclusion of a case.*

3. Causation

- Divisible and indivisible diseases.

4. Tracing assets and liabilities

- How to identify the correct defendant or defendants, including any parent, predecessor or associated company; or any other body or authority, or their predecessors, having liability.
- How to identify the relevant employer's liability or public liability insurer.
- Records and other resources available for tracing the history of an individual's employment; and the history of an employer or other liable body.

5. Medical knowledge

- Understanding of the nature of a medical record.
- 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;
 - identify from the record the point at which knowledge of the condition was first acquired;
 - identify causative correlations.
- Medical terminology associated with the types of case undertaken.
- The main medical specialisms, at consultant level, involved in the types of disease dealt with.
- Future risk of progression of the disease or the development of consequential conditions.
- *The impact of other conditions on life expectancy.*

THE OUTCOMES OF EFFECTIVE PERFORMANCE

The outcomes of effective performance for the Senior Litigator Standard are grouped in to eleven units, based broadly on 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 occupational disease *and asbestos related* 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.

1. Taking initial instructions

To meet the Standard, you must be able to:

- Act urgently where a client is near to death to secure instructions and evidence of exposure.*
- Identify cases in which there is a risk that the client may die before the matter is concluded and address, where appropriate, the question of the need to preserve evidence after death.*
- On the death of a client, give appropriate advice to the family or personal representative and, where necessary, obtain instructions on the retention of tissue samples and other biological evidence.*

3. Advising the client and managing their expectations

To meet the Standard, you must be able to:

- a) Ensure, where necessary, that the client has access to specialist legal advice on employment matters arising from the case, including on continuing exposure to the conditions giving rise to the claim.
- b) *Advise, fully and tactfully, on the consequences of concluding a case before or after death, in terms of establishing liability, and of quantum.*

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

To meet the Standard, you must be able to:

- a) Trace the employment history of the client, and the history of the employer(s) or other liable defendant.

5. Dealing with the defendant and other parties

To meet the Standard, you must be able to:

- a) Identify knowledge documents establishing the date on which the defendant could reasonably have been aware of the risk to which the client was exposed.

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

To meet the Standard, you must be able to:

- a) Identify and retain evidence which may be relevant to other claims against the defendant.