

## **GUIDANCE ON ASSESSMENTS FOR PORTAL CLAIMS HANDLER STATUS**

### **1. Introduction**

Portal Claims Handler is a personal accreditation status awarded by the Association of Personal Injury Lawyers. A candidate for Portal Claims Handler status must demonstrate that they meet the Standard of Competence for Portal Claims Handlers. This will involve assessment against the Outcomes of Effective Performance contained within the Standard.

Assessment should be integrated with the normal supervision and management of a fee earner. There is not a separate assessment process, nor is there a requirement to assemble further evidence over and above completion of the Portfolio. Evidence of competent performance will come from the day to day work of the candidate. The judgements required to assess competence, for the purpose of achieving accredited Portal Claims Handler status, are the same judgements that a firm should be making in determining the level of supervision a fee earner requires, and the extent to which they are able to take certain steps in progressing a claim on their own authority.

The Standard, and this guidance, will help you take those decisions in a structured, reliable and defensible way, as well as enabling you to certify that a candidate meets the Standard for Portal Claims Handler status.

### **2. Who can be an assessor?**

An assessor should be a Litigator of at least three years' standing, a Senior Litigator, a Fellow or a Senior Fellow. The assessor should usually be responsible for supervising the work of the candidate. It is recognised that, with turnover of supervisory staff and the period of time necessary for full competence to be demonstrated, more than one person may act as assessor of a candidate. In such cases, each assessor should make it clear which units of the Standard they have assessed.

### **3. Evidence of competent performance**

#### **Where to find evidence**

The Standard sets out the functions involved in progressing a personal injury claim through the Portal, in a broadly sequential manner. It is divided into eight units, each dealing with a stage in the process which might be handled by a claims handler. 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 will come from the files for which they are responsible. The steps taken in progressing the matter should be self-evident from the file (or equivalent electronic record), in the form of completed CNF, Stage 2 and Stage 3 screens, attendance notes, correspondence, etc.

Evidence of effective performance should arise naturally from the work of the candidate and supervision of that work by the assessor. Evidence will almost always come from a candidate being assessed in the normal course of their work. In relation to each function, you need to be satisfied that the candidate has carried it out, has done so properly, and has done so consistently. You are looking for more than a single example that a function has been properly undertaken, you need to observe consistent performance over a period of time, 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 evidence to arise include the general discussion of the progress of cases that is a normal part of the relationship between fee earner and supervisor; from formal reviews of files, either at key stages of litigation or through random file review; from annual or other appraisal of performance; and from observation of how the fee earner manages the relationships involved in progressing a case. For example, an assessor might wish to listen in to telephone calls between the candidate and a client, or a call seeking informal advice from counsel.

A candidate may be assessed as competent in relation to road traffic accident (RTA) cases only, employers' liability/public liability (EL/PL) cases only, or both categories of case. This reflects the way in which work is organised in different firms. Large firms may have separate units handling the two categories of claim, whilst in a smaller firm a single team or an individual fee earner may handle all Portal cases.

Whether evidence comes from one type of work alone, or from both categories, it must demonstrate full competence across all of the functions.

## Knowledge, understanding and know-how

You need to be satisfied not only that the function has been undertaken, but that it was done properly. It is important to ensure that the candidate understood what they were doing and why, and did not just happen to do the right thing by luck. You can establish this by discussing the case with the candidate, and questioning them as to why they took, or propose to take, a particular course of action. This is no different to the discussion you would expect to have anyway with a fee earner when discussing a case with them, or reviewing one of their files. This type of questioning allows you to satisfy yourself 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.

Portal Claims Handlers are likely to have quite a wide range of prior educational attainment. At one end of the scale an individual might hold a law degree and thus have familiarity with the legal principles underpinning liability and with the rules of evidence. At the other end of the scale an individual might hold school leaving qualifications only. A similar range may apply to experiential learning; a person who has previously worked in a law firm in a secretarial or administrative capacity may have developed a good understanding of relevant legal principles and rules, whereas a school leaver will have had no opportunity to acquire such understanding.

You will need to make arrangements for persons recruited as claims handlers, who do not have relevant legal knowledge or experience, to acquire the necessary knowledge and know-how, as specified in the Standard. It is likely that most firms will arrange for in-house, on-the-job learning, although external courses run by organisations such as CILEX may also be relevant. Given the potentially wide range of backgrounds from which claims handlers may come, learning arrangements will need to be designed individually to bridge any gap between existing knowledge and the knowledge requirements of the Standard.

The knowledge requirements of the Standard should be interpreted in relation to the task to be carried out; for example, the depth and breadth of knowledge expected is less than that which would be expected of an LPC graduate.

You will need to provide guidance to the candidate about the learning they need to undertake. Your guidance will be based on your initial assessment of the knowledge and understanding already possessed (such an assessment may well have been made during the recruitment process), and on your firm's arrangements for CPD generally. On-the-job learning may well include tuition from yourself or an experienced Portal Claims Handler. It may be supplemented by the use of learning materials for group or individual study, such as online learning or webinars. All of these learning opportunities are referred to as "guided learning", that is learning which has been structured by guidance from a supervisor or assessor.

Those elements of knowledge and understanding relating to the Portal procedures are specified fully in the Standard, as all candidates, regardless of their prior learning, will need to demonstrate possession of this specialist knowledge and understanding.

## Assessing particular types of function

There are some types of function which recur throughout the Standard, and a broadly consistent approach should be taken to assessing whether the candidate has demonstrated competence in them:

- At several points in the Standard, the candidate has to review the case so as to advise the client, or decide on the next step to be taken. Examples are at 3a, 3b, 4(General)g, 4(General)m, 5g, and 5i. In determining whether the Standard is met, you will need to consider whether the candidate has assembled all necessary and relevant evidence, applied the relevant law to the facts, and identified and made appropriate use of any relevant precedents. Your evidence would come from the file and from discussion of a case in the normal course of supervision.
- At several points in the Standard, the candidate has to decide whether or when to take a particular course of action. Examples are at 3f, 5f, and 7a. In respect of each of these you need to consider how the candidate reached, or proposes to reach their decision. Have they fully considered the advantages and disadvantages of the available courses of action, in relation to the law, the evidence, and the wishes of the client, and then selected the course of action most likely to secure the best possible outcome for the client? Your evidence would come from any note on the file of reasons for selecting a course of action, but predominantly from your discussion of cases with the candidate, in the normal course of supervision.
- At several points in the Standard the candidate is required to identify cases where particular action may be appropriate. Examples are at 3f, 4(General)l, and 5f. In respect of these actions it is not expected that the candidate will necessarily have undertaken the action (as, if it were required, the file might then be assigned to a more senior fee earner), but candidates should be able to demonstrate an understanding of a course of action which might be available, and which should be considered as a way of progressing a case.

#### 4. Satisfying the Standard

In relation to the elements under each unit of the Standard, the assessor 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 cases, and (in relation to a candidate for both RTA and EL/PL accreditation) over a range of types of case?***

If the answer to the question 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 questions, before a further assessment is made.

If the answer to the question is “yes”, then the assessor can certify the candidate as competent in relation to the elements of the unit in question. For the purpose of the final assessment, the assessor confirms competence in relation to each element of each unit, basing the decision on his or her record of the candidate’s performance in respect of each individual element.

Assessment of possession of knowledge and understanding, and of know-how, should be related to the functions. A person who lacked the necessary knowledge, understanding or know-how would be unable to carry out many of the listed functions satisfactorily. A weakness in knowledge, understanding or know-how might lead an assessor 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 allow the candidate to work unsupervised. In that event, the candidate should be advised of the shortcoming, and it should be addressed through a training plan.

The behaviours which underpin effective performance should also be demonstrated in relation to relevant elements of the units of the Standard. However, assessors 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 assessor 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 assessor can certify that the candidate demonstrates the required behaviours.

## **5. Using the Portfolio**

Assessors should keep a record of the candidate’s progress. This can be done by completing the assessor’s part of the Outcomes of Effective Performance section of the Portfolio.

If you feel that a case handled by the candidate provides evidence that an element of the Standard has been fully met you should enter what you did to ascertain this (e.g. “reviewed file”, discussed case”, “observed client interview”), the date and your initials. The Outcomes of Effective Performance section then enables you to:

- Identify any elements of the Standard in which evidence is lacking, enabling you then to allocate to the candidate cases which would provide the opportunity for competence to be demonstrated;
- Facilitate eventual completion of the Portfolio, which must be submitted to APIL when formal application for Portal Claims Handler status is made;
- Pass on the record of the evidence you have assessed, should you cease to be the candidate’s supervisor;
- Have a record of your assessment decisions on file, should the decision in respect of your candidate be one of those reviewed as a part of the APIL quality assurance procedure.

No record beyond this Portfolio is needed as, if properly completed, it will point to where evidence exists on file. Where you have been satisfied, from your own observation, that an element of the Standard is satisfied, your comments in the Outcomes of Effective Performance section will be taken as conclusive evidence.

For reasons of client confidentiality, the first column (cases providing evidence) should be anonymised before submitting a copy of the Portfolio to APIL, by deleting the case names or deleting the columns electronically. A copy of the Portfolio must be retained by the firm.

## **6. Quality assuring assessment decisions**

APIL will review a sample of assessment decisions, to ensure that the personal accreditation scheme remains credible. The review will usually consist of reviewing with the assessor the evidence on which they relied in making their judgements, making use of the Portfolio copy retained in-house. For this purpose, copies of Portfolios should be retained by the firm for a period of five years following the submission of the application for Portal Claims Handler status. In common with all retrospective reviews of assessment decisions, this is a review of the assessment made, not of the candidate.