

# **ASSOCIATION OF PERSONAL INJURY LAWYERS**

## **Standard of competence for Portal Claims Handlers**

### **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 newly recruited to the role concerned, in appraising their subsequent performance, and in identifying training needs which may exist.

Standards of occupational competence are used also as a means of setting the intended learning outcomes from training programmes, or for qualifications. They provide a benchmark against which personal accreditation of competence may be judged.

#### **The Portal Claims Handler**

Claimant 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.

Many lower value claims are now processed through the Ministry of Justice Claims Portal ('the Portal'). The upper value of claims which may be handled in this way is £25,000 and the types of case which may be processed now includes Public Liability ('PL') and Employers Liability ('EL'), as well as the Road Traffic Accident ('RTA') claims for which the Portal was first designed. The levels of fixed fees available for work processed through the Portal are such that many firms now use individuals who do not hold any formal legal qualification to process claims. Such claims handlers may have school leaving qualifications, general administrative work experience, or a degree in a subject other than law.

This standard of competence is designed to assist firms in planning and delivering on-the-job training for Portal Claims Handlers. APIL issues certificates of competence to those who have been certified as meeting the standard. Competence may be certified in relation to one or all of

RTA, EL and PL claims. This recognises that, in some firms, an individual may process one type of claim only.

A Portal Claims Handler will always work under the supervision of a qualified lawyer. A Portal Claims Handler will be focused on achieving the best possible result for the client.

## **The scope of the Standard**

Many individuals recruited as Portal Claims Handlers will have no prior knowledge of the law. The Standard expects acquisition of some legal knowledge and understanding. This should be sufficient to give the individual an understanding of the principles on which claims are settled, familiarity with the protocols governing the use of the Portal, and the ability to use standard references and precedents in valuing straightforward claims.

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

The Standard reflects the law, regulations, Civil Procedure Rules and Pre-Action Protocols in England and Wales.

A firm of solicitors is subject to all of the standards of professional conduct published by the SRA, and may be covered also by the standards of the Law Society's Lexcel accreditation scheme or 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 Portal Claims Handler.

## THE STANDARD

A Portal Claims Handler manages and progresses a personal injury case so as to establish, assert and enforce the rights of an injured client in an effective and efficient manner, and is competent in:

- Taking initial instructions
- Dealing with funding and regulatory matters
- Advising the client and managing their expectations
- Preparing the case, gathering evidence and making the claim
- Dealing with the compensator
- Drafting documents
- Instructing counsel and experts
- Managing post-settlement and file closure procedures

A person will be regarded as competent if they have the knowledge, understanding, know-how and skill to demonstrate the outcomes of effective performance listed below, whilst displaying the behaviours which underpin effective performance.

## KNOWLEDGE AND UNDERSTANDING

To meet the standard, you need to have knowledge and understanding of:

### 1. Law relating to personal injury litigation generally

- Common law principles, legislation and court decisions relating to liability, causation and damages.

### 2. Law relating to types of personal injury covered by your field of practice

- Depending on your field of practice, you will have knowledge and understanding of statutes and regulations relating to occupiers' liability, employers' liability, workplace accidents, public liability, road traffic accidents and occupational disease, together with the rules governing the Motor Insurers Bureau Agreements.

### 3. Portal procedures

#### GENERAL

- The types of case which are appropriate, or inappropriate, to processing through the Portal.
- The stages of the Portal process (Claims Notification Form (issues of liability), Stage 2 (issues of quantum), Stage 3 (judicial determination)).
- The basis on which a case may exit the Portal, including denial of liability by the compensator.
- The nature and significance of limitation periods.
- The limits of your authority to progress a matter, and who to refer to if those limits are reached, or if a case exits the Portal.

#### COSTS MATTERS

- The nature of costs regimes and the types of costs which can and cannot be recovered when cases are settled through the Portal.

- The need to document time spent on a matter outside the fixed costs regime.
- How costs are assessed.

#### EVIDENCE AND INFORMATION

- The nature of the heads of general damages.
- The nature of evidence needed to substantiate claims for general and special damages.
- The central significance of medical evidence.
- The Motor Insurer Database (AskMid) and the Employer Liability Tracing Office (ELTO).

#### PARTICULAR TYPES OF CASE

- The circumstances in which interim payments may be appropriate.
- The circumstances in which a claim for future loss of earnings may be appropriate.
- The rules and procedures relating to infant cases.
- The law relating to seat belt contributory negligence.

#### COMPLETING THE SCREENS

- The mandatory and non-mandatory fields at each stage of the Portal process, and the nature of material to be entered in them.
- The gravity and significance of the statement of truth.
- What is required to demonstrate that a valid retainer is in place.

#### DETERMINATION OF CASES

- The nature of Part 36 offers and the circumstances in which a Part 36 offer may be made in respect of a case still within the Portal.
- The inter-relationship between Part A and Part B offers for the purposes of Stage 3 determination.
- The prohibition on introducing at Stage 3 material not included at Stage 2.

### **4. Rules of Procedure, etc.**

Current Editions of:

- Civil Procedure Rules and Practice Directions
- Pre-Action Protocol for Personal Injury Claims
- The Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents (conducted through the Portal)
- The Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims (conducted through the Portal)
- The Rehabilitation Code
- UK Rehabilitation Council standards
- Civil Justice Council protocol for the Instruction of Experts

## 5. Professional Conduct

Current Editions of:

- SRA Code of Conduct for Solicitors, RELs and RFLs
- CILEX Code of Conduct
- Association of Personal Injury Lawyers Code of Conduct
- Association of Personal Injury Lawyers Consumer Charter

## KNOW-HOW

To meet the Standard, you need to know how to find up to date law and precedents using publications such as *Current Law*, *Butterworths Personal Injury Service*, *Kemp on Procedure* and *Kemp and Kemp: the Quantum of Damages*, *JSB Guidelines for the Assessment of Damages*, *Facts and Figures: Tables for the Calculation of Damages*, the APIL/Jordan series of guides, and electronic databases such as Lexis Nexis PSL and Thomson Reuters' Westlaw. You will know when you need to seek advice from a supervisor or legally qualified member of your firm. You will participate in your firm's arrangements for CPD and keep yourself up to date by meeting a 16 hour annual CPD requirement. You will know how to operate your firm's case management system to interact with the Portal, or you will know how to use the Portal directly.

## THE OUTCOMES OF EFFECTIVE PERFORMANCE

The outcomes of effective performance are grouped in to eight units, based broadly on the sequence of events involved in progressing a personal injury 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.

### 1. Taking initial instructions

To meet the standard, you must be able to:

- a) address liability, establish the limitation date, the identity of the client and other potential parties, check for any conflicts of interest which might prevent you/your firm acting in the matter;
- b) satisfy yourself that the matter is within the expertise of yourself/your firm, and if not, make arrangements for the matter to be referred elsewhere;
- c) identify cases which your firm is unwilling to accept, explain to the client why this is, advise them of their ability to seek assistance elsewhere, and provide limitation advice;
- d) collect from the client sufficient information (or review and assess information collected by an initial client contact team) to establish liability (both breach of duty and causation), facts and quantum of damages and to enable the case to be progressed;
- e) identify the steps which need to be taken for the collection and preservation of evidence;
- f) establish the client's current and potential future entitlement to state benefits, and arrange for the client to be advised about these;
- g) establish any need for rehabilitation, and whether any rehabilitation is in progress;
- h) ensure there is a clear understanding of the next steps to be taken by yourself/your firm, the client and any third parties, giving priority to any issues concerning liability, and limitation;
- i) ensure that the client has understood the consequences of any risk assessment that you/your firm will make of the case, and of any limit to the scope of the retainer.

## 2. Dealing with funding and regulatory matters

To meet the standard, you must be able to:

- a) conduct an initial risk assessment, or check that one has been carried out by an initial client contact team, in accordance with the policies of your firm;
- b) explain to the client the funding options available at your firm and appropriate to the case, including conditional fee/after the event insurance arrangements, legal expenses insurance, trade union funding, paying personally; and the consequences of these arrangements for the client in terms of any personal liability for costs;
- c) put in place the agreed funding arrangements;
- d) issue to the client the firm's standard client care letter, and explain to the client its provisions, including arrangements for dealing with yourself or another named contact within the firm, and complaints procedures (if this has not already been done by an initial client contact team);
- e) disclose and explain to the client any relevant financial arrangement between your firm and third parties (such as shared marketing schemes);
- f) comply with your firm's procedures for "know your client" and the conduct of any anti-money laundering checks;
- g) exercise vigilance in satisfying yourself that the claim your client wishes to pursue is not fraudulent.

## 3. Advising the client and managing their expectations

To meet the standard, you must be able to:

- a) advise the client, in clear language, of
  - your analysis of the case and the relevant law,
  - the likely outcomes, including best and worst case scenarios, and possible compromise solutions,
  - the available options for resolving the matter, including negotiation and litigation,
  - the Portal procedure; the time likely to be taken; and the circumstances in which a case might leave the Portal, and the way in which it would then be progressed, fast track and multi-track routes, the choice between these, and the consequences in terms of procedure and time likely to be taken; use of the Portal for low value claims,
  - rights and duties in relation to disclosure of information, dealing with the defendant, third parties, after-the-event and before-the-event insurers, experts and the court, and your client's dealings with you/your firm,
  - how you will conduct the case and consult with the client on tactics and proposed courses of action;
- b) continually manage the expectations of the client by advising them, as the case proceeds, of the prospects of success, the range within which any award of damages might fall, the significance of issues raised by the defence; the risks inherent in litigation, and when and why there may be periods of apparent inactivity due to factors such as time allowed for the defendant to respond, awaiting stabilisation of an injury pending medical assessment, etc;
- c) ensure the client has a clear understanding of any documentation or other evidence they must supply, information (such as costs of care) which they must record, and changes in medical condition or employment circumstances of which they must notify you;
- d) assess (with specialist advice where necessary) and explain to the client the impact on state benefits to which the client may be entitled of any interim payments and final settlement;

- e) check, in respect of all advice given, that the client has understood what you have told them, and understands any action they must take, and the time within which it must be taken;
- f) identify cases where a personal injury trust ought to be set up to protect any of the client's means-tested state benefits; identify cases in which a Compensation Recovery Unit Certificate should be sought, advise the client of the consequences of securing a certificate, and check that the compensator has applied, or is applying for a Certificate;

#### **4. Preparing the case, gathering evidence and making the claim**

##### **GENERAL**

To meet the standard, you must be able to:

- a) record time spent on the matter, in case costs have to be assessed at a later stage;
- b) at all times, conduct the case within the provisions of the relevant Pre-Action Protocol;
- c) gather medical evidence, including by instructing appropriate medical experts;
- d) identify and instruct other expert witnesses;
- e) arrange for the collection, preservation and accurate recording of evidence such as photographs of accident scenes, measurements, etc;
- f) arrange interviews of, or information collection from, witnesses as to liability and/or damages in a timely, economical and professional manner;
- g) place an initial value on the claim, and identify and calculate the heads of damage and rehabilitation;
- h) complete the Claim Notification Form ('CNF') such that it is able to stand as a letter of claim if the case comes out of the Portal;
- i) assemble evidence for special damages and future loss for the Stage 2 pack;
- j) recognise circumstances in which interim payments would be appropriate;
- k) ensure that the client's need for rehabilitation is addressed as a priority, and that appropriate action is taken to communicate with the compensator and to arrange assessment as provided in the Rehabilitation Code, or make other appropriate arrangements;
- l) assess whether it is appropriate to use a pre-action court application, especially applications for pre-action disclosure;
- m) review the level of costs and disbursements and the adequacy of insurance cover, and conduct on-going risk assessment, in the light of evidence gathered;
- n) review medical and other evidence to ensure it is consistent with the client's own account of their injury, and review any discrepancies with the client.

##### **PROCESSING THE MATTER THROUGH THE PORTAL**

To meet the standard, you must be able to:

- a) Populate accurately the mandatory and, where appropriate, the non-mandatory fields of the CNF;
- b) Provide sufficient information for a compensator to come to a reasonable opinion on liability;
- c) Use the Motor Insurer Database (AskMid) and the Employers' Liability Tracing Office (ELTO) to identify third party insurers;
- d) Upload photographs and other data to the CNF using required formats and within size constraints;
- e) Ensure that the statement of truth can properly be made;
- f) Ensure that you have sufficient documented agreement from the client to certify that a valid retainer is in place;
- g) Populate accurately the mandatory and, where appropriate, the non-mandatory fields of the Stage 2 settlement pack;
- h) Decide whether to seek an oral or paper hearing at Stage 3;

- i) Decide who should act as advocate in an oral Stage 3 hearing;
- j) Draft and submit proceedings and any related application under Part 8 CPR, in line with the protocol, prior to a Stage 3 hearing being scheduled.

## **5. Dealing with the compensator**

To meet the standard, you must be able to:

- a) progress the case within the timescales and other provisions of the relevant Pre-Action Protocol, using the Portal process, as appropriate;
- b) negotiate effectively, using the Stage 2 procedure and, where appropriate, outside the Portal, with the aim of achieving a settlement of the case (or an issue within it) to the client's best advantage, within the limits of the law and evidence; identify circumstances in which it is appropriate to make or withdraw a protocol offer;
- c) make effective use of office computer systems to manage the progress of cases;
- d) take a pro-active approach to dealing with compensators, recognising circumstances in which you need to take an initiative to move a matter forward;
- e) resolve problems arising from a defendant's refusal to negotiate, a lack of cooperation from a client, or a lack of response from an expert;
- f) seek interim payments, if this is appropriate;
- g) review the risk assessment in the light of responses from other parties, inform the client of progress and agree with the client any revised strategy;
- h) decide whether additional damages need to be added in to the Stage 2 pack and re-submitted to the compensator;
- i) decide when, within the appropriate time limit, you should seek authority for proceedings to be issued to protect the client's rights and interests.

## **6. Drafting documents**

To meet the standard, you must be able to:

- a) draft attendance notes, witness statements, and the N208 claim form in line with CPR practice direction 8B;
- b) draft schedules of loss, and explain to the client the way in which the law requires losses to be identified;
- c) draft documents which:
  - are succinct but comprehensive and are written in good English,
  - are produced in a format and style appropriate to their intended purpose and audience,
  - fit within the size and other constraints of the Portal screens,
  - are designed to further clients' interests,
  - fulfil legal requirements, are accurate in law and make critical use of precedents,
  - if formal court documents, conform to court rules,
  - are produced in an efficient and timely manner;

## **7. Instructing counsel and experts**

To meet the standard, you must be able to:

- a) identify the point(s) in a case at which it is appropriate to involve counsel through seeking informal advice or a formal opinion;
- b) make a selection of counsel or specialist solicitor appropriate to the issues in the case, using your firm's register of such experts;
- c) agree with counsel the basis of their remuneration;
- d) make a selection of experts in relation to the evidence to be proved, using your firm's register of experts;



- e) agree the amount and timing of payment to experts instructed;
- f) explain the role of counsel and experts to your client, and in particular the duty of the expert to the court;
- g) ensure that letters of instruction to experts set out clearly the nature of the opinion that is sought using, where appropriate, the model letter to medical experts annexed to the Pre-Action Protocol for Personal Injury Cases;
- h) ensure that instructions to counsel state clearly the objective being pursued by the client, and summarise key issues in the case;
- i) ensure that all and only relevant supporting documentation is sent to counsel and experts;
- j) agree timetables for the provision of opinions or advice, and take effective steps to ensure these are adhered to;
- k) check expert reports and documents prepared by counsel to ensure that all issues identified in the instructions have been addressed in accordance with the protocol.

## **8. Managing post-settlement and file closure procedures**

To meet the standard, you must be able to:

- a) assess your own costs;
- b) deal with any legal fees, or after-the-event insurer, to ensure the client is fully indemnified;
- c) arrange for the closure and archiving of the file, in accordance with the policies of your firm.

## **BEHAVIOURS WHICH UNDERPIN EFFECTIVE PERFORMANCE**

1. At all times you act in a manner which reflects your duty to act in the best interests of your client, and your duty to the court.
2. You conduct all of your work to a proper professional standard and safeguard your independence and integrity as a lawyer.
3. You maintain an orderly file or electronic record, with detailed attendance notes.
4. You have an awareness of the limits of your own knowledge and competence, you seek advice where necessary, and you refer on matters which are outside your field of expertise.
5. Your behaviour reflects your awareness that your firm can only provide a service to its clients if the firm is commercially viable.
6. You present information clearly, concisely, accurately and in ways which promote understanding.
7. You use communication styles which are appropriate to different people and situations, and display empathy with the injured client and their family.
8. You respond promptly and positively to problems with a proposed course of action.
9. You are pro-active in case management, taking the initiative where appropriate, and never leaving matters until the last minute.
10. You are a willing and positive participant in your firm's arrangements for quality assurance and peer review of files.
11. You are active in keeping up to date with developments in the law, through reading journals and participation in training, and you are always willing to share your expertise with colleagues.