



ASSOCIATION OF PERSONAL INJURY LAWYERS

Standard of competence for Accredited Senior Counsel in Personal Injury

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 may be used both to identify those who have achieved a level of specialist competence, and to provide a basis for a development plan for an individual who aspires to the role concerned.

The Accredited Senior Counsel in Personal Injury

Accredited Senior Counsel in Personal Injury (ASCPI) is a personal accreditation status awarded by the Association of Personal Injury Lawyers to its members. There is no requirement to have served any specified period of time to secure ASCPI status, as the time taken to develop competence will vary according to the mix of work undertaken by individual barristers. Whilst it is likely that an ASCPI will devote most of their time to personal injury work, it is recognised that most barristers practice in more than one area of law.

An ASCPI is likely to have acted in a range of personal injury cases, and may specialise in the more complex and higher value cases, for example those involving clinical negligence and catastrophic injuries.

The scope of the Standard

The Standard assumes possession of the legal knowledge and understanding required for the qualification of barrister, together with the skills and experience likely to have been developed in the years following call.

The Standard reflects the law, regulations, Civil Procedure Rules and Pre-Action Protocols in England and Wales). Rules and Protocols are subject to frequent updates and care should be taken to ensure that current versions are used. References to the Personal Injury Pre-Action Protocol should be taken as references to the Clinical Disputes and the Disease and Illness Protocols in respect of matters falling within the scope of those protocols.

Related standards

The Standard deals with personal injury litigation only. It is in addition to the requirements of the Bar Standards Board Code of Conduct.

APIL accreditation

A separate guide is available on the use of the Standard in determining eligibility for personal accreditation as an Accredited Senior Counsel in Personal Injury.

THE STANDARD

An ASCPI acts on the instructions of a solicitor to advise, draft documents, provide oral representation in meetings and to act as an advocate in court proceedings in personal injury cases so as to establish, assert and enforce the rights of an injured client in an effective and efficient manner. The range of required competences covers:

- Accepting instructions
- Advising – general
- Advising – specific issues
- Drafting
- Court advocacy and other oral representation

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. The overarching competence to which the Standard attests is:

You must be competent to progress all stages of a multi-track case from the start of process (advising on merits and pleadings) to trial advocacy.

KNOWLEDGE AND UNDERSTANDING

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

1. The general law and legal system of England and Wales

- The core knowledge and understanding of the law applied in England and Wales as required of a barrister at the point of call.

2. Law relating to personal injury litigation generally

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

3. 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.

4. Rules of procedure, etc.

- Civil Procedure Rules and Practice Directions (current update)
- Pre-Action Protocols for Personal Injury Claims
- The 2007 Rehabilitation Code
- UK Rehabilitation Council standards
- Civil Justice Council Protocol for the Instruction of Experts

5. Professional conduct

- Code of Conduct of the Bar of England and Wales (Current edition)
- 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 different methods of conducting research for current precedents on matters of law and quantum. You will be able to use 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 PSL*, *Lawtel*, *Bailii* and *JustCite*. You will make appropriate use of seminars, networking and knowledge sharing activities to keep yourself up to date and adhere to APIL's 16 hour CPD requirement.

THE OUTCOMES OF EFFECTIVE PERFORMANCE

The outcomes of effective performance are grouped in to five units, each made up of a number of elements, each of which in turn reflects a specific function, or a group of related functions.

1. Accepting Instructions

When considering whether to accept instructions, you must be able to:

- a) conduct an initial risk assessment;
- b) check that all options for funding the matter have been properly considered;
- c) exercise vigilance in satisfying yourself that the claim the client is pursuing is not fraudulent;
- d) identify the circumstances in which it may be appropriate to instruct leading counsel.

2. Advising - general

To the extent required by instructions from your instructing solicitor, you must be able to advise, in writing, in conference or by telephone, of:

- a) your analysis of the case and the relevant law;
- b) the likely outcomes, including best and worst case scenarios, and possible compromise solutions;
- c) the available options for resolving the matter, including negotiation, mediation or other alternative dispute resolution, and litigation;
- d) fast track and multi-track routes, the choice between these, and the consequences in terms of procedure and time likely to be taken;
- e) 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.

3. Advising – specific issues

To the extent required by instructions from your instructing solicitor, you must be able to advise, in writing, in conference or by telephone, on the following matters:

(i) INITIAL MATTERS

- a) potential issues relating to capacity (e.g. if the claimant is a minor, suffering from a serious head injury, etc), evidence necessary to support a course of action arising from capacity, any need to involve the Court of Protection;
- b) whether a personal injury trust ought to be set up to protect any of the claimant's means-tested benefits;
- c) whether a provisional damages award should be considered;
- d) whether periodical payments should be considered as a part of the damages award, and if so, the evidence required to support such a claim.

(ii) EVIDENCE, QUANTUM AND OFFERS

- a) the strength of available evidence, and any need for additional medical, expert or other evidence;
- b) initial valuation of the claim and calculation of heads of damages and rehabilitation;
- c) evidence for a schedule of special damages and future loss;
- d) whether it is appropriate to make an application for pre-action disclosure;
- e) the merits of offers made by the defendant under Part 36 CPR.

(iii) PRE-TRIAL PROCEDURES

- a) when proceedings should be issued to protect the claimant's rights and interests;
- b) selection of a court (high court or county court) and a location that is in accordance with court rules;
- c) identification of the issues the court will be asked to determine, and the potential value of the claim;
- d) whether to seek standard directions or to request a case management conference;
- e) identification of experts to be called;
- f) identification and resolution of any limitation or jurisdictional issues;
- g) whether to seek a full trial, a split trial or a trial on quantum only;
- h) whether it is appropriate to make an interim application or to seek a further case management conference;
- i) evaluating, testing and challenging expert evidence;
- j) the adequacy of any offer made, and whether any claimant offer should be made, revised or withdrawn;
- k) whether a joint settlement meeting, or other form of alternative dispute resolution procedure would be appropriate;
- l) whether it would be appropriate to make an application for expert oral evidence to be given;
- m) compliance with directions;
- n) completeness of hearing bundles.

(iv) POST-TRIAL OR POST-SETTLEMENT

- a) advice to your instructing solicitor and the claimant on the implications of the judgment;
- b) advice to your instructing solicitor and the claimant on the merits of a possible appeal;
- c) advice on the need for your instructing solicitor to retain the file where there are long term procedures to be dealt with, for example where a provisional damages award is made, or where the claimant is a minor or protected party.

4. **Drafting**

To the extent required by your instructing solicitor, or by court procedures, you must be able to:

- a) draft particulars of claim, defences, appeal notices, application notices, witness statements, chronologies, skeleton arguments, agenda of issues, pleadings, originating processes, case summaries, and other documents required for litigation;
- b) draft schedules of loss and counter schedules; understand and use Ogden tables;
- c) draft formal written advice on evidence, quantum and liability;
- d) if unattended at a hearing, keep a full note of the proceedings;
- e) 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
 - are designed to further claimants' 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.

5. Court advocacy and other oral representation

- (i) You must be able to prepare for and conduct all types of court proceedings, including:
 - a) fast track trials
 - b) multi-track trials
 - c) assessment of quantum hearings
 - d) protected party hearings
 - e) application hearings
 - f) interim payments hearings
 - g) pre-trial reviews
 - h) appeals
 - i) inquests

- (ii) You must be able to prepare for, conduct and negotiate effectively within:
 - a) case management conferences
 - b) joint settlement meetings
 - c) other formal or semi-formal meetings or ADR events presenting an opportunity of obtaining a settlement.

- (iii) In conferences with instructing solicitors and claimants you must be able to:
 - a) manage the expectations of the solicitor and claimant by advising them of the prospects of success, the range within which any award of damages might fall, the significance of issues raised by the defence; and the risks inherent in litigation;
 - b) test the robustness and veracity of the evidence available;
 - c) advise on any need for further evidence to be collected;
 - d) assess the credibility of the claimant as a witness.

- (iv) In conferences with experts you must be able to:
 - a) assess the credibility of an expert as a witness;
 - b) display an understanding of the subject matter;
 - c) identify from medical or other records the issues on which a case might turn;
 - d) formulate appropriate questions to medical or other experts to enable their evidence to be interpreted in the light of the law.

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 the claimant, 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 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.
4. You present information clearly, concisely, accurately and in ways which promote understanding.
5. You use communication styles which are appropriate to different people and situations, and display empathy with the injured claimant and their family.
6. You respond promptly and positively to problems with a proposed course of action.
7. You are active in keeping up to date with developments in the law, through reading journals and participation in conferences and training.
8. You share your expertise through speaking at conferences, writing for journals and teaching.