



ASSOCIATION OF PERSONAL INJURY LAWYERS

Standard of competence for upgrade from Litigator to Senior Litigator

Northern Ireland

INTRODUCTION

The Senior Litigator

Senior Litigator is a personal accreditation status awarded by the Association of Personal Injury Lawyers to its members. It sits in a hierarchy of personal accreditation, but is the single most important status, as it represents the minimum level of competence necessary to head the PI litigation function within a firm.

Whilst there is no requirement to have served any specified period of time to secure Senior Litigator status, realistically, from first involvement with civil litigation, it is likely to take at least five years' experience to develop fully the competence required for the status.

The requirements for Senior Litigator status build on the competences required for Litigator status. A Senior Litigator is deemed to be competent to work without supervision from another personal injury lawyer, may well supervise a team of lawyers and paralegals, will have responsibility for the assessment and management of risk and, within the framework of the risk management policy of a firm, will usually be self-authorising at all key stages of litigation. **To be eligible to apply for an upgrade to Senior Litigator status, a candidate must first have secured Litigator status by application (those who gained the status automatically via the Law Society PI Panel must complete the full Senior Litigator Standard).** The Senior Litigator Standard is of particular value in preparing a personal development plan for an individual who aspires to Senior Litigator status, in that it enables types of experience and training which will develop the required competence to be identified.

A Senior Litigator will be focused on achieving the best possible result for their client. As a relatively senior fee earner within a firm, a Senior Litigator will have a good commercial awareness and will understand that a firm must be profitable to be viable, to invest in its services and the development of its staff, and to continue to provide a service to its clients.

A Senior Litigator is likely to have handled several types of personal injury litigation, may well specialise in certain fields, and is likely to run cases which are predominantly the more complex and higher value cases assigned to the High Court (as opposed to County Court) court process. A Senior Litigator is also likely to have had experience of running or supervising lower value cases.

The scope of the Standard

The Senior Litigator Standard assumes possession of the legal knowledge and understanding required for the qualifications of solicitor or barrister, together with the skills and experience likely to have been developed over a period of about five years' legal employment following initial qualification.

The Standard addresses the circumstances of a person working as a Senior Litigator in an office of a firm of solicitors or alternative business structure.

The Standard reflects the law, regulations, Northern Ireland County and High Court Rules and Pre-Action Protocols in Northern Ireland.

RELATED STANDARDS

The Standard deals with the litigation function only. Some Senior Litigators will have additional roles within their firms to which other standards of occupational competence, or similar statements may apply. For those with management and supervisory responsibilities, the Management and Leadership Standards published by the Management Standards Centre may be of relevance (www.management-standards.org).

A firm of solicitors is subject to all of the standards of professional conduct published by the Law Society of Northern Ireland, 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.

THE STANDARD

A Senior Litigator 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. He or she is competent to take, without supervision, key decisions on accepting cases, assessing risks, evaluating offers and issuing proceedings.

- Taking initial instructions
- Dealing with funding and regulatory matters
- Advising the client, managing their expectations, mediation and alternative dispute resolution
- Dealing with the defendant and other parties
- Issuing proceedings, the allocation stage and case management conference
- Managing disclosure
- Drafting documents
- Instructing counsel and experts
- Preparing for and managing the trial
- Managing post-trial or post settlement and file closure procedures

KNOWLEDGE AND UNDERSTANDING

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 above, whilst displaying the behaviours which underpin effective performance.

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

1. The general law and legal system of Northern Ireland

- The core knowledge and understanding of the law applied in Northern Ireland as specified in the "Day one outcomes for qualification as a solicitor" published from time to time by the SRA.

2. Law relating to personal injury litigation generally

- Common law principles, legislation and legal precedents relating to liability, causation and damages.

3. Law relating to types of personal injury covered by their field of practice

- Depending on the field of practice, candidates 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 schemes of the Criminal Injuries Compensation Authority and the Motor Insurers Bureau.

4. Rules of procedure, etc.

- Current Editions of: Civil Procedure Rules and Practice Directions, Pre-Action Protocols for Personal Injury Claims, The Ministry of Justice Low Value Personal Injury Claims process (the Portal), AskCue and MedCo, The Rehabilitation Code, UK Rehabilitation Council Standards, Civil Justice Council protocol for the Instruction of Experts and Guide to the Conduct of Cases involving Serious Injury.

5. Professional Conduct

- Current Editions of: Solicitors' Code of Conduct, and Association of Personal Injury Lawyers Code of Conduct and Consumer Charter.

KNOW-HOW

To meet the Standard, candidates 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. They 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 *Lawtel* and *JustCite*.

THE OUTCOMES OF EFFECTIVE PERFORMANCE

A candidate applying for Senior Litigator status by upgrading from the Litigator Standard must provide evidence of competence in the additional units and elements of the Senior Litigator Standard set out below. Each element of each unit is over and above the requirements set out in the eight units for candidates applying for Litigator status. The Litigator Standard should therefore be considered during the assessment of the candidate.

1. Taking initial instructions

To meet the Standard, you must be able to:

- a) identify any issues with regard to the capacity of the client (e.g. if the client is a minor, suffering from a serious head injury, etc) and take appropriate steps such as the appointment of a Controller or Litigation Friend;

2. Dealing with funding and regulatory matters

Fully covered within Litigator standard

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

To meet the Standard, you must be able to:

- a) identify any case where a provisional damages award should be considered;
- b) identify any case where periodical payments ought to be considered as part of the damages award;

5. Dealing with the defendant and other parties

To meet the Standard, you must be able to:

- a) seek interim payments if this is appropriate, ensuring the appointment of a Controller where the client lacks capacity;
- b) initiate and run effective joint consultations;
- c) identify circumstances in which it is appropriate to propose mediation as a way forward;

6. Issuing proceedings, the allocation stage and case management conferences

To meet the Standard, you must be able to:

- a) decide when, within the appropriate time limit, proceedings should be issued to protect the client's rights and interests;
- b) select a court (high court or county court) and a location that is in accordance with court rules and consistent with the tactics of your case plan;
- c) draft the Endorsement; or prepare instructions to counsel to draft the Endorsement, as appropriate;
- d) complete the Civil Bill or Whit to enable proceedings to be issued;
- e) follow the correct procedures to enable the court to issue proceedings;
- f) follow the correct procedures to ensure service is effected;
- g) ensure that notice is given to third parties such as the Motor Insurers Bureau or the defendant's insurers, including notices required under any after-the-event or before-the-event insurance or other funding arrangement;
- h) follow the procedures necessary when suing or suing on behalf of a bankrupt;
- i) identify the issues the court will be asked to determine, and the potential value of the claim;
- j) identify the experts to be called;
- k) identify and deal with any limitation or jurisdictional issues;
- l) decide on the facts and merits of each case whether to seek a full trial, a split trial or a trial on quantum only;
- m) in the High Court, draft directions and seek to agree them with the other side in advance of any masters or judges review;
- n) identify the circumstances (such as the need to seek an interim payment, the need for an additional expert, or a lack of response from the other side) in which it is appropriate to make an interlocutory application and in the High Court to seek a further Master or Judge's review;
- o) prepare for and conduct effectively any Master's review, Judge's review, no COR review or other timetabled opportunity to progress your client's case, by identifying the outcome you wish to achieve and deciding upon the strategy and tactics most likely to succeed in that aim.

7. Managing disclosure

To meet the Standard, you must be able to:

- a) ensure that disclosure made to the other side is of that which is required and sufficient to support your client's claim, both before and after court proceedings have been issued, whilst not providing records or information that may properly be withheld;
- b) ensure that sensitive or confidential information is disclosed on a suitably restricted basis;
- c) identify missing documents which should have been provided to you, and seek these from the other side, making an application where necessary;
- d) ensure that document lists match documents produced and comply with court rules;
- e) ensure that document lists are produced within the timetables set and in an order appropriate for the case and the volume and type of document;
- f) ensure that all properly requested copies are provided in a timely manner, and billed for if appropriate;
- g) ensure that your client understands their duty to preserve evidence and to provide documents sufficient to support their claim, their continuing obligations, and the full scope of disclosure.

8. Drafting documents

To meet the Standard, you must be able to:

- a) draft witness statements, chronologies, skeleton arguments, pleadings, originating processes, attendance notes and other documents required for litigation;
- b) draft schedules of loss; understand and use Ogden tables, explain to the client the way in which the law requires losses to be quantified;
- c) contribute to the development and maintenance of precedent documents within your firm.

9. Instructing counsel and experts

To meet the Standard, you must be able to:

- a) critically evaluate, test and challenge expert evidence;
- b) evaluate the overall performance of counsel and experts for the purpose of maintaining your firm's register of preferred counsel and experts.

10. Preparing for and managing the trial

To meet the Standard, you must be able to:

- a) conduct a review of all issues previously addressed, in the light of evidence obtained and developments since court proceedings were issued, including a consideration of whether periodical payments ought to form a part of any settlement;
- b) consider whether a joint consultation, or any other form of alternative dispute resolution, would be appropriate and, if so, make arrangements for it;
- c) in the High Court, consider whether it would be appropriate to make an application for expert oral evidence to be given, and serve any necessary Civil Evidence Order notices;
- d) confirm that all directions have been complied with;
- e) actively manage the setting of a trial date with the court office and defendant solicitors to ensure the availability of counsel, witnesses and experts, notify these and your client of the trial dates set, and the times within the trial period at which their attendance may be required;
- f) serve witness summonses and subpoenas if required;
- g) explain to your client and witnesses the trial process, and what will be expected of them;
- h) ensure that any hearing bundles contain all necessary documents, are arranged according to court rules and practice directions, and lodged within the court timetable, and make all necessary practical arrangements for the day of the hearing including pre-hearing consultations in order to enable the client to meet counsel if appropriate;
- i) ensure that draft trial bundle indices are exchanged and agreed where possible with the other side;
- j) ensure that counsel is briefed in good time;
- k) ensure that if directed by the court, skeleton arguments are exchanged with the other side and lodged with the court;
- l) ensure that appropriate arrangements are made to deal with the special circumstances of a client who is a minor or a protected party, or who has a disability;
- m) keep under review the level of costs and disbursements, the adequacy of the level of insurance cover, and the need for any necessary authority to proceed;
- n) ensure that full notes are taken of all court hearings, making use of digital recorded transcripts where available;
- o) explain to your client the progress of the hearing and the judgement of the court.

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

To meet the Standard, you must be able to:

- a) provide your client with written confirmation of the outcome of the trial, and advise on the implications of the judgement;
- b) inform funders and experts of the outcome of the trial;
- c) inform any Controller appointed of the outcome of the trial;
- d) in High Court cases, assess your own costs and negotiate these with the other side; instruct costs draftsmen to prepare a bill of costs, and check the contents of the same;
- e) if required, instruct costs draftsmen to prepare a schedule of objections to the other side's costs, where necessary, and to deal with interlocutory matters if necessary;
- f) in High Court cases, attend and conduct, or instruct costs draftsmen to attend a taxation hearing;
- g) take the necessary steps to enforce recovery of a judgement, if payment is not made by the other side;
- h) ensure that your client is provided with the opportunity of taking independent financial advice on the investment of any damages awarded; where appropriate advise on the establishment of a personal injury trust;

- i) deal with any legal fees, or after-the-event insurer, to ensure the client is fully indemnified as far as possible;
- j) ensure that payment of damages and costs is made promptly, taking appropriate enforcement action where this does not occur and ensuring that all other arrangements to reflect the agreed settlement or judgement are put in place, such as the securing of periodical payments;
- k) identify circumstances in which the file should be retained to enable long term procedures and advice to be dealt with, for example where a provisional damages award is made, or where the client is a minor or Protected Party.