

## APIL Scotland

### Accredited Spinal Cord Injury Specialist

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

A person meets the Standard for accreditation if they meet in full the competence requirements for Senior Litigator, Fellow or Senior Fellow. 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 spinal cord injury specialists.

#### **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 spinal cord injury**

- The law relating to liability including negligence (breach of duty, causation and loss), contributory negligence, and consent.
- The Access to Health Records Act and the Data Protection Act.
- The Adults with Incapacity (Scotland) Act 2000, including financial and litigation capacity, and the role of a Guardian in the running of a case. [Where applicable – there will be some cases where a spinally cord injured claimant has suffered a brain injury resulting in lack of capacity.]
- An appreciation of clinical negligence issues that might arise out of the pursuer's treatment by paramedics, in surgery or from poor manual handling by clinical staff – and an ability to refer on to a specialist if appropriate.

##### **2. Rules of procedure, etc**

- The law relating to interim payments.
- Form of award – lump sums, (variable) periodical payments and provisional damages.
- Security of funding of periodical payments.
- Sheriff Court Summary Application procedures.
- The Rehabilitation Code.
- Guide to the Conduct of Cases involving Serious Injury.

### **3. The health care sector**

- The structure of the health service, authorities and trusts within NHS Scotland.
- An understanding of specialist spinal injury units.
- Private specialist spinal injury care providers.

### **4. Medical knowledge**

- An understanding of the anatomy of the spine, the spinal cord and the effects of a spinal cord injury – levels and grades of injury: complete and incomplete injuries: hemiplegia, cauda equine syndrome, Brown-Sequard syndrome, central cord syndrome, anterior cord syndrome, posterior cord syndrome, etc.
- An understanding of different mechanisms of spinal cord injury.
- An understanding of the various medical techniques/procedures used in treating acute and chronic spinal cord injury.
- An appreciation that people with certain conditions (e.g. ankylosing spondylitis and Klippel-Feil syndrome) are more pre-disposed to spinal cord injury.
- An appreciation of the effects of spinal cord injury in relation to mobility, sensation, pain, pressure sores, bladder and bowel function, sexual function, fertility, and psychological issues.
- An understanding of the special features of spinal cord injury including syringomyelia (syrinx), spasms, autonomic dysreflexia.
- Effect of the ageing process on spinal cord injury and associated problems of long-term wheelchair dependency (e.g. shoulder and upper limb problems, osteoporosis).
- An understanding of the arguments on life expectancy issues in spinal cord injury cases.
- 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.
- Understanding of the nature of a medical record.
- The main medical specialisms involved in spinal cord injury at consultant level (e.g. spinal surgeon, rehabilitation medicine, urology, etc).

### **5. Impact of spinal cord injury**

- An understanding of accommodation issues.
- An understanding of bladder and bowel management.
- An understanding of sexual function and fertility options.
- An understanding of skin management and pressure sore avoidance.
- An understanding of impact on employment/education.
- An understanding of care needs, manual handling difficulties, different types of care regimes and the impact of Working Time Regulations
- Understanding of the impact that a spinal cord injured person may have on their family.
- Knowledge and understanding of the circumstances in which instructions should be sought from family members or a personal representative.

## 6. Overall coordination of the case

- Understanding of the role of the solicitor as the lead professional with oversight of all aspects of the case, and as the person responsible for ensuring that arrangements are made for appropriate instructions or consents to be given, by or on behalf of the client, to all medical and legal professionals, and all providers of services to the client.
- Understanding of the importance of interim payments.
- Understanding involvement of an independent case manager.
- Understanding accommodation, care, equipment and transport needs of the spinal cord injured claimant.
- Understanding of rehabilitation and specialist case management specific to spinal cord injury; and the right to instruct independent case managers.
- Understanding of key experts in case; spinal injury, care, equipment, physiotherapy and accommodation and need for other experts on a case by case basis.

## 7. Funding and support services

- Knowledge of funding options for litigation.
- Knowledge of the funding and support for care available from Primary Care Trusts, Mental Health Services, Local Authorities (social services and housing), Department of Work and Pensions, and the charitable sector.

## THE OUTCOMES OF EFFECTIVE PERFORMANCE

The outcomes of effective performance for the Senior Litigator Standard are grouped in to eleven units, based broadly of 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 spinal cord injury 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, competence in all of which is required to be an Accredited Spinal Cord Injury Specialist.

### 1. Taking initial instructions

To meet the Standard, you must be able to:

- a) Ensure that the client (and his/her family if appropriate) is advised about the range of funding options available to them including funding options which your firm may not offer.
- b) Ensure that the client (and his/her family, if appropriate) has access to benefits and grants to which they may be entitled, arranging a social services assessment if required and appropriate, and an NHS funding assessment if required and appropriate.
- c) Arrange for the appointment of an independent case manager either under the provisions of the Rehabilitation Code or funded by way of early interim payment.
- d) Ensure that an appropriate regime is in place to care for the client on discharge from hospital and on an ongoing basis; work with the family to ensure that the client has access to all necessary medical, nursing and other specialist care.

- e) In the event of incapacity, identify the right person(s) to give instructions on behalf of the client; deal with any necessary review of instructions in the event of recovery of capacity by the client.

## **2. Dealing with funding and regulatory matters**

To meet the Standard, you must be able to:

- a) In the event of incapacity of the client, ensure that in respect of the matters dealt with in this unit of the Senior Litigator Standard, the family (if not responsible for issuing instructions on behalf of the client) is kept fully informed.

## **3. Advising the client and managing their expectations**

To meet the Standard, you must be able to:

- a) Ensure that, in the event of incapacity, the general responsibility to advise the client and manage their expectations is exercised in relation to the family of the client, or whoever has responsibility for the client.
- b) In the event of incapacity, maintain contact with the family, or other responsible carer, to ensure that any fluctuations, deterioration or improvement in the client's condition are reported to you.
- c) Assess when it is necessary to seek further medical advice on changes in the client's condition.
- d) Demonstrate an understanding of the legal theory and practical issues of securing suitable accommodation.

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

To meet the Standard, you must be able to:

- a) Review medical and other evidence to ensure it is consistent with the account you have been given of the injury and, in the event of incapacity, review any discrepancies with the family of the client, or other person providing the account of the injury.
- b) Formulate and review a strategy as to form of the award (lump sum/periodical payments).
- c) Formulate and review an interim payment strategy.
- d) Advise on any issues relating to accommodation, care package, equipment and transport.
- e) Demonstrate knowledge of which experts to instruct, when and on what basis (unilateral instruction or joint instruction).
- f) Demonstrate that proceedings are issued at an appropriate time and the claim is progressed at appropriate pace.

## **5. Dealing with the defendant and other parties**

To meet the Standard, you must be able to:

- a) Make early contact with appropriate individuals at the defender's insurance company and their legal representatives.
- b) Demonstrate that your letters of intimation of claim are case specific to ensure that the claim is handled at the appropriate level by the defender's insurer/lawyer.
- c) Consider the appropriateness of an early meeting with the defender's insurer/legal representatives to ensure a collaborative approach is explored.

- d) Make timely application for the appointment of a Guardian, where this is necessary, having regard for the time taken for such appointments to be made.
- e) Maintain an overview of case management provision to ensure it remains in line with the medical and expert evidence in the case.

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

To meet the Standard, you must be able to:

- a) Deal with post-trial procedures to ensure compliance with the Adults with Incapacity (Scotland) Act 2000: Codes of Practice for Guardians.
- b) Ensure that suitable arrangements are made in relation to the ongoing investment and management of damages awarded.
- c) Consider the appropriateness of a personal injury trust and professional trustees.
- d) Advise on estate planning and pre/post nuptial agreements.
- e) Ensure that files are not destroyed in cases of periodical payments or provisional damages awards.