

Legal Services Consumer Panel- call for evidence on referral arrangements.



A response by the Association of Personal Injury Lawyers

26 February 2010

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation whose members help injured people to gain the access to justice they deserve. Membership comprises solicitors, barristers, legal executives and academics who are all committed to serving the needs of people injured through the negligence of others.

The aims of the Association of Personal Injury Lawyers (APIL) are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

APIL welcomes the opportunity to provide input into this research. Given the experience of our members we have sought comment from all our English and Welsh members before preparing this response. In addition we consulted with our executive committee.

Additional thanks go to:

Muiris Lyons- Vice President

Stephen Lawson- Secretary

Stuart Kightley- additional officer

Any enquiries in respect of this response should be addressed, in the first instance, to:

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Introduction

APIL welcomes the opportunity to provide input into this research into referral fee arrangements. Our comments relate only to the personal injury market. In 2007 we conducted research of our own membership which showed that 53 per cent of respondent firms were involved in referral fee or fee sharing arrangements¹.

APIL fights for the rights of injured people and was never in favour of the ban on referral fees being lifted. APIL's starting point has always been: what is in the best interests of injured people? However, once it became clear that the ban on referral fees was likely to be lifted, along with the introduction of other reforms to the civil justice system, APIL had to reconsider its position. If referral fees were to be permitted, then APIL's position was that there needed to be proper protection in place for the client along with complete transparency of those arrangements. We also supported the introduction of professional rules (now in place) that would not only prevent solicitors from obtaining clients through marketing practices such as cold-calling, but would also prevent solicitors from accepting referrals from third parties who used such techniques.

Current views on referral fees amongst our members remain mixed, but many continue to be worried about the future developments in this area of the law. Concerns voiced to us express worries about high referral fee payments, the lack of transparency and potential conflicts of interest. There is also concern over the likely impact of the introduction of Alternative Business Structures (ABS), hence our interest in the work the LSB consumer panel are undertaking. We offer our help to the panel and its research team.

¹ APIL members' views on LEI panels and payment for referrals- key findings 2007, 2.1.

Very high referral fees are being reported which may affect the way in which a case is handled. Complex relationships and the lack of transparency around referral fee arrangements are all cause for concern as it may result in injured claimants being kept in the dark about how their cases are being conducted.

Dealing with all these current issues and balancing the need to ensure a fair and open market, providing access to justice is a significant challenge.

We intend to keep fighting for the highest standards of ethical and professional behaviour and client care. We are committed to working with the Solicitors Regulation Authority with a view to improving the current system, ensuring effective regulation and exploring the possibility of the development of a capping system for referral fees - one of the suggestions made recently by Lord Justice Jackson.

Definition of referral arrangements

There is a lot more to referral fees than the straightforward payment of a fee in return for a case. The area is regrettably very complex and this highlights one of our concerns, namely lack of transparency. Some firms agree other arrangements in return for obtaining personal injury work, for example providing non contentious legal advice for free, such as will writing and conveyancing. Other agreements tie a firm, receiving work on a referral basis, to a particular ATE product, medical agency, rehabilitation provider or counsel's chambers- all of which may in turn pay a commission to the referrer. Some firms agree to handle minor legal work such as "bent metal" cases (car accidents where there is no injury) in return for receiving personal injury claims from insurers. Others have complicated referral arrangements with "Before the event" insurers where the reality of the position is that cases are not run with the benefit of a real indemnity but on what is effectively a "no win no fee no cost" basis for the insurer.

Charities such as Headway and the Spinal Injuries Association along with groups such as the Asbestos support groups also enter into referral arrangements. Careful consideration should, we believe, be given to the potential impact to any rule changes to these charitable and other organisations.

The definition of 'referral arrangements' is particularly important when considering the future of the legal market and ABS. The potential implications of this need to be fully explored. For example, would it be acceptable or desirable for a firm to enter into a joint venture with an advertising company? Or for an insurer to own either wholly or partly a firm of solicitors? What would be the impact on the PI market? Would it create a monopoly or cartel situation? Would the market become anticompetitive? Would advice be truly independent? Would there be a reduction in access to justice at a local level if claims were concentrated among a handful of "super-firms?" One only has to look at the changes in the defendant insurance industry over the last 15 years to see how this has developed there. Where once there were many insurers and many law firms handling insurance work, there are now only a handful of insurers and a handful of panel firms. Were that situation to be permitted to develop on the claimant side what would be the implications for access to justice for claimants?

The personal injury market

Claimant solicitors currently have a choice: they can choose whether or not to pay for referrals. Alternatively, they can choose to market their business in other ways. The latter choice could take the form of advertising, continuous updating of website and web material or conference advertising. This in turn provides the injured person with choice. There are a number of different ways in which an injured person may choose to locate and instruct a solicitor.

The referral fee market is a complex one and it is essential that it is examined as a whole. There are numerous ways in which an injured person can find advice from solicitors. This could include:

- Individual firm advertising, promotion, local networking
- Past client recommendation
- A referral from a claims management company where the case is sold on to the solicitor for a fee. The most common type of arrangement under this description is a lead referral where contact information and very limited accident information is sold to the solicitor for a fee. Other types of agreement do operate, for example some claims management companies effectively act as an agent, obtaining witness and other evidence, for an increased fee
- Referral from Insurer to panel firm where there is Before the Event Insurance (BTE)
- Referral from Insurer to panel firm where there is no BTE
- Union referral to a panel firm
- Network of solicitors sharing advertising costs for example Injury Lawyers 4U
- Solicitor to solicitor referral. This will often happen where a particular firm do not offer advice in a particular specialism and refer the claim on to a firm that do.

Consumer Choice

APIL strongly believe that any reforms should promote access to justice, not restrict it. Our starting point is that it is essential that injured people are not denied access to a solicitor of their choice and that they are not then penalised for exercising that freedom of choice because of the operation of referral fees.

In many cases there appears to be a complete lack of transparency in the referral arrangements. For example, our members report concerns with tactics adopted by insurance companies. Insurers often charge large referral fees to their panel firms in return for cases. This represents a significant “non-risk” income stream for them of considerable value. BTE insurers charge referral fees to their panel firms which many individuals who bring a claim are not aware of. We also hear of hidden agreements between the panel firms and insurers where a firm will not claim against the insurance policy if unsuccessful. Little or none of this is often declared and can potentially compromise the independence of the solicitor handling the cases.

In 1990 the EC Directive on Legal Expenses Insurance (87/344) was incorporated into the law of England and Wales in the Insurance Companies (Legal Expenses) Regulations 1990. It adopted the wording of the Directive in its entirety in Regulation 6.

“Where under a LEI contract recourse is had to a lawyer to defend, represent or service the interest of the insured in any enquiry or proceedings, the insured shall be free to choose that lawyer (or other person)”.

The word ‘proceedings’ was interpreted by the then insurance ombudsman to mean that the consumer could only have the freedom to choose his lawyer once court proceedings are formally issued. This interpretation of the word “*proceedings*” coupled with the BTE providers desire for income from referral fees has meant that injured people are put under considerable pressure to go with a panel firm even when it may not be in their best interests and not the solicitor of their choice.

More recently in the case of *Erhard Eschig v UNIQA Sachversicherung AG*² the court considered whether Article 4(1)(a) of Directive 87/344 is to be interpreted as entitling

² [2010] 1 CMLR 5

the legal expenses insurer to reserve the right, where a large number of insured persons suffer losses as a result of the same event, itself to select the legal representative of all the insured persons concerned. The thrust of the decision is that the ECJ will not look kindly on insurers who seek to include in their LEI policies additional exclusions affecting the right to choose one's own legal representative: they are limited to those originally contained within the Directive.

We attach suitably anonymised copies³ of letters that have been sent to injured people by their BTE providers making claims such as "our panel solicitor can deal with your claim, more efficiently and effectively". It is also suggested by one leading BTE provider that if a claimant wishes to use a firm of their choice it will "inevitably delay the progression of your claim" as they will have to check the firm's infrastructure before they confirm whether funding is possible under the policy. These are statements which are used by BTE providers to ensure they capture as many claims for their panel firms as possible in order to maximise income for insurers through referral fees being paid to them by their panel firms. These statements often alarm and/or confuse individuals wishing to bring a claim as they are often first time users of the justice system and unused to legal procedure and who, as a result of the accident in which they have been involved, are incredibly vulnerable.

It is also essential that the LEI cover provides sufficient levels of indemnity to fund a claim. The levels of cover must be sufficient to cover the cost of investigation and pursuing a claim to conclusion. This may include commencing proceedings and conducting a trial. The terms of any LEI policy should not be so restrictive on a solicitor as to prevent them being able to properly pursue a claim on behalf of an injured person. It is also particularly important where a claim is unsuccessful that there is sufficient indemnity to cover the costs of disbursements and the defendant's costs. A further problem with BTE currently is that policy cover can exclude certain types of

³ Appendix A

civil claim, for example clinical negligence claims and disease claims. Holiday insurance also often restricts LEI cover where a claim is being brought against the tour company.

The current Conditional Fee Agreement model on the whole allows the injured person access to an independent solicitor without risk. Recoverability of ATE insurance allows the injured person the possibility of insuring against the risk of losing their claim. These policies, in the main, are self insuring which means that the injured person does not have to pay for the insurance premium, the cost of the premium is recoverable from the losing party if the claim is successful and if the claim is unsuccessful the policy pays for the premium itself, along with the other side's legal costs and any disbursements. With the exception of multi party actions and appeals this system provides certainty for the injured person.

In addition to the issues raised above there is also the difficulty of tackling the low level of public awareness over LEI policies, levels of indemnity required and freedom of choice. Research conducted by FWD Thinking Communication in July 2007⁴ indicates that there are comparatively few underwriters of legal expenses insurance; that most parties offering products are in fact intermediaries; and that the underwriting model has been affected by the payment of referral fees and common disputes over the free choice of lawyer, which costs insurers more.

The report also draws attention to the importance of ensuring that claims need to be "viewed independently" and properly regulated so that "conflicts of interest do not occur" particularly in light of the changes brought in by the Legal Services Act. This is highlighted in the context of one insurer (or its subsidiary companies) insuring two policy holders and the insurer or a law firm owned by it acting for both policy holders

⁴ The Market for 'BTE' Legal Expenses Insurance, prepared on behalf of the Ministry of Justice.

in respect of the same accident. There would therefore need to be a balance between the interests of liability insurers, legal expenses insurers and the injured person.

Ensuring freedom of choice and avoiding anti-competitive practices is fundamental to the ongoing successful future of vital work in this area. We urge the panel to also look closely at stricter regulation of referral arrangements and as mentioned earlier the definition of referral fees and those affected.

We have seen above that referral arrangements are complex and can involve insurer's, solicitors and claims management companies, to name a few. All these bodies are regulated by different regulators, this fragmented approach to regulation must be explored to ensure adequate enforcement provisions. Additionally the insurance companies insuring the person responsible for the accident are also not seeking to capture claims and refer them to their panel firms. We attach evidence of this from Privilege Insurance ⁵. There are reports from our members that the SRA are reluctant to regulate such a practice as are the FSA. Is it truly independent advice if the injured person is introduced by the person who will end up paying the bill?

There is no reason why the regulation of lawyers in this field should differ from that of the regulation of the medical profession. Access to justice and access to healthcare are fundamental human rights and the bedrock of our society. Close consideration should also be given to the implications of the introduction of ABS, particularly the ownership of these structures and the potential for ownership conflicts. These are matters for particular scrutiny and we are concerned that the momentum for change will result in some of the vital issues being brushed aside.

Solicitors' practices are well regulated and even more closely monitored since the regulatory function of the Law Society was passed to the SRA. Access to justice for

⁵ Appendix B- letter from Privilege Insurance

those negligently injured by others requires good availability and accessibility to quality independent legal advice.

Accreditation

APIL's members are claimant personal injury solicitors and barristers who are committed to the interests of injured people. In 1990 the association, with the backing of its membership, supported the development and introduction of a specialist accreditation scheme⁶, identifiable to the public by a quality kitemark. Competencies and experience are evaluated and through public awareness programmes consumers are made aware of the quality independent advice available to them.

We believe that it is vital that those looking to pursue a claim are informed and able to seek out an appropriate lawyer and not just any lawyer. We regularly hear anecdotally that insurers refer work to the highest bidder through closed bids. This practice lacks transparency and often the injured person is simply unaware of how the solicitor has come by their details. We believe that it is essential that transparency, regulation and competent professional advice are key to achieve the necessary protection that all public deserve.

⁶ Appendix C – APIL accreditation scheme brochure

Appendix A

Correspondence from:

DAS

Direct Line

Proximo



DAS Group
DAS House, Quay Side, Temple Back, Bristol BS1 6NH
Telephone: 0117 934 2000 Fax: 0117 934 2109 DX141841 Bristol 19 www.das.co.uk

A member of the international DAS organisation

Private and Confidential

Your Ref: [redacted]
Our Ref: [redacted]
Date: 15/01/2009

Dear Mr [redacted]

Your Claim for Personal Injury

We have recently received notification of a potential personal injury claim on your behalf from Hatch Brenner Solicitors.

At this stage, we are unable to confirm whether cover may be available under your Legal Expenses Policy, but write to inform you of the process should you wish us to consider the matter further.

Should we confirm cover, in accordance with the terms of your Policy, we would deal with your claim in house or via a solicitor from our panel until such time as Legal Proceedings are issued (i.e. a sealed court claim form is issued by the courts). The first thing we would need to do is establish that your claim is an insured incident for the purpose of the Policy and that it has a reasonable chance of succeeding. This must be 51% or greater. If reasonable prospects of success are not established, we will be unable to assist further.

Should you wish to proceed with making a claim, there are a number of advantages in having a DAS panel solicitor deal with it.

Panel solicitors are selected because of their expertise in dealing with certain types of claims. The firms are vetted and continually monitored by DAS to ensure they deliver a quality service. The firms are familiar with our insurance policies and have our delegated authority to proceed with claims, which means that they are concluded more efficiently and effectively.

Although we appreciate that your own solicitor will already be familiar with your file, it would not take a panel firm long to become acquainted with it. Once cover for your claim has been confirmed, the panel solicitor will request the file from your own solicitor to ensure they have the same information that you have previously provided and you will not be asked to provide this information again. It will be of no detriment to you if a non local solicitor is appointed to act on your behalf. The panel solicitor will conduct the case via written correspondence and telephone calls and, should they deem it necessary to meet with you face to face, they will travel to you.

If DAS appoint a panel solicitor to act on your behalf at this stage, then funding for your legal expenses can begin immediately. This will include your costs, any costs incurred from the other side (should they be awarded against you), and the funding of expert reports (e.g. medical reports) up to the limit of indemnity proscribed by your Policy.

DAS Legal Expenses Insurance Company Limited is authorised and regulated by the Financial Services Authority and is a member of the Association of British Insurers.

Head and Registered Office:
DAS House, Quay Side, Temple Back, Bristol BS1 6NH

Registered in England and Wales. Company Number: 103274



LEI 1 0807



DAS Group
DAS House, Quay Side, Temple Back, Bristol BS1 6NH
Telephone: 0117 934 2000 Fax: 0117 934 2109 DX141841 Bristol 19 www.das.co.uk

A member of the international DAS organisation

Given that we have favourable agreements with our panel firms with regards to the rates they charge, your indemnity limit could, potentially, provide cover for more work than if a non panel solicitor is instructed, thereby reducing the chance that you will become personally liable for any costs. If you continue to instruct your own solicitors, you will need to cover these costs on a private basis until such time as proceedings are issued.

In the event that proceedings do become necessary we will be happy to consider the appointment of your nominated solicitor in accordance with your right to freedom of choice. However, the Financial Services Authority (our regulating body) requires that we satisfy ourselves that the firm you have selected has the necessary expertise and infrastructure to deal with your claim. This will inevitably delay the progression of your claim.

Should you wish to proceed with your claim, we would be grateful if you could provide the additional information requested below to enable us to make a full assessment. Return of this form also confirms your agreement for us to appoint a panel solicitor under the Policy.

Should you have any additional queries, please contact our freephone number 0800 055 6850, between 8am to 8pm Monday to Friday and 9am to 5pm Saturday and Sunday.

We look forward to being of assistance.

Yours sincerely

Personal Injury Team
Claims Department

Ins.2

To: Claims Department Reference 09/0056935

Please provide the following information:

- (a) If the incident related to a road traffic accident, were you the driver? Yes/No
If you were a passenger, who was driving the vehicle and what is their relationship to you?
.....
- (b) Was the injury the result of a specific accident? Yes/No
If no, please provide brief details:
.....
- (c) Please provide brief details of the injuries you sustained:
.....
- (d) Date of your accident:
- (e) Your telephone number:

I am happy for DAS to appoint a panel solicitor on my behalf should cover be confirmed for my claim.

Signed Date.....

DAS Legal Expenses Insurance Company Limited is authorised and regulated by the Financial Services Authority and is a member of the Association of British Insurers.

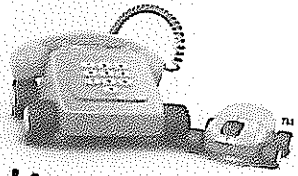
Head and Registered Office:
DAS House, Quay Side, Temple Back, Bristol BS1 6NH
Registered in England and Wales. Company Number: 103274



LEI 1 0807

Our ref: FLP/KB46/32662283

12 January 2010



direct line

Direct Line Insurance plc
Direct Line House
1 Cathedral Square
Trinity Street
Bristol BS1 5DL
Telephone 0117 984 3313
Facsimile 0117 930 4938
DX 122110 Bristol 12

Dear I

Legal Expenses Claims

Thank you for your completed claim form.

We attempted to contact you by telephone but as we were unable to do so we have appointed the following solicitors from our panel to assess your claim. We did this so that you would have access to legal advice without delay:

Colemans CTTS
25-29 High Street
Kingston upon Thames
Surrey
KT1 1LL
Tel: 0208 2969966

Your policy provides that we are entitled to conduct of your claim, through one of our panel solicitors, up until the point it becomes necessary to issue legal proceedings. Once legal proceedings are issued you are then entitled to choose the solicitor to act for you.

The issue regarding freedom of choice of solicitor has been debated for some time now and the Financial Ombudsman Service (FOS) gave guidance to the industry on this point in their bulletin in March 2003.

As a result of their guidance we will allow freedom of choice of solicitor only on the following types of claim: -

- Personal injury cases where general damages exceed £10,000 and where the case is non-routine
- Clinical negligence claims
- Significant boundary, employment or contract disputes (where there is a considerable history or high value).

Any decision we make regarding legal representation is made with these guidance points in mind, where we consider that the FOS would support our position.

If you have any additional information that may influence our decision, please let us know.

The solicitors will contact you shortly and it would assist if you allowed them time to consider your papers. Provided that it is always more likely than not that you will be successful with your claim, the solicitors will be appointed to act for you and subject to policy conditions Direct Line Insurance will meet the solicitors reasonable and proportionate professional fees. If at any time, it is not more likely than not that you will be successful in your claim, you will be advised immediately. Please note that in sending your claim form to these solicitors, the Claims Department has not assessed the legal merits of your claim.

Direct Line Insurance has carefully selected these solicitors for their expertise in the area of law relating to your claim and for their ability to provide a high level of service. Should you have any concern regarding the handling of your claim, please write to the solicitors who will be happy to address any issue you raise. If you remain concerned following their reply, please contact us as per the details below.

Our Panel law firms make payments to us which, depend on the number of personal injury claims we refer to them and they also provide other services to us on a reduced cost or non cost basis. The payment that they make to us in the case of a claim involving personal injury varies but the average fee is approximately £670 for each personal injury.

You are entitled to receive further information on the financial arrangements between us and the Panel law firm your claim is referred to – if you would like this information please ask us or your panel law firm

Yours sincerely,



Legal Expenses Claims Department

**Your contact: Kate Blythman
Direct Dial: 0845 878 1406
Direct Fax: 0845 878 1914**

Our Ref: SOL2327

28th May 2009

Holmes & Hills
3a Market Place
Great Dunmow
Essex
CM6 1AX

RECEIVED

Proximo Ltd
Park House
Chantry Court
Sovereign Way
Chester
CH1 4QN

Tel 0870 777 0266
Fax 0870 777 0265
www.proximo.co.uk

Dear Sirs

Our Reference: SOL2327
Your Reference:
Our Client:
Accident: 2nd February 2009

Thank you for your recent letter.

Unfortunately, the scheme we administer under the legal services and advice section of our policyholder's Legal Expenses Insurance Policy only provides a freedom for the policyholder to choose a solicitor to pursue a claim when it becomes necessary to issue proceedings to obtain a settlement for the policyholder.

Whilst we are aware that a person is entitled to exercise freedom of choice of solicitor at the point where it is necessary for a solicitor to represent, serve or defend their interests in any inquiry or legal proceedings, we would not be prepared to indemnify if you were to continue to represent the customer and revert to us at point of issue. This is because the terms and conditions of the contract of insurance would not have been adhered to and as such, would have been breached.

Where the opportunity exists for the claim to be settled by negotiation, the policy wording dictates that we instruct a member of our panel of solicitors to attempt to conduct the claim through negotiation until such a time that it is clear that no remedy can be obtained without the issue of proceedings at which point we would be pleased to endorse appointment of your firm to deal with the case.

Naturally, we have been able to negotiate preferential terms with our panel of solicitors and, in order to administer the policy as prudently as possible, we feel obligated to appoint a member of the panel wherever possible in order to be able to provide the legal expenses insurance element of the policy at a competitive rate.



Authorised and
regulated by the
Financial Services Authority

Proximo is regulated by
the Ministry of Justice in
respect of regulated claims
management activities.
its registration is
recorded on the website
www.claimsregulation.gov.uk

Please note that all calls are recorded

The decision of Tony Boorman of the Financial Ombudsman Service (FOS) endorses this view as reported in Issue 26 of the Ombudsman News in March 2003.

Mr Boorman referred to the Court of Appeal decision in *Sarwar v Alam* and gave the FOS position.

He stated that the FOS did not believe that Regulation 6 (1) of the Insurance Companies (Legal Expenses Insurance) Regulations 1990 would not require an insurer to offer a policyholder freedom to choose their own solicitors at the start of a claim.

He also went on to say that where no conflict of interest existed or the claim was a routine matter such as a motor accident dispute and not a 'large' personal injury (multi-track) claim or contained complex issues (such as medical negligence) it would not disadvantage the policyholder through appointment of a member of the insurer's panel.

We believe that this claim falls within these parameters and consequently must decline to accede to our policyholder's wish for us to appoint your firm to deal with the claim under the policy terms.

We have written to the client to advise of our response and explaining the options available.

Please also note that we will not indemnify any claims made by you on behalf of passengers who have been involved in the above incident.

Should you have any queries please do not hesitate to contact us directly.

Yours faithfully


**For and on behalf of the
Operations Director**

Appendix B

Correspondence from Privilege Insurance

Our Ref:

Claims Department
42 The Headrow
Leeds
LS1 8HZ

Dear _____

OUR INSURED: |
ACCIDENT DATE:

We write further to the above incident and our recent telephone conversation. As you are aware, liability has been accepted in relation to this incident.

We understand you have sustained injuries as a result of the incident and would like to take this opportunity to wish you the best for a speedy recovery.

As discussed, we are in a position to compensate you for the injuries sustained and to enable us to deal directly with this, we require you to complete and return the attached forms. These enable us to obtain information with regards to the injuries you have sustained and to notify the Compensation Recovery Unit of your injury, as we are obliged to do.

We look forward to hearing from you. However, if you have any queries regarding this matter, please do not hesitate to contact the writer on the telephone number detailed.

It is important to emphasise that you are entitled to independent legal advice at any stage regarding any element of your claim. You should also be aware that if you wish to bring a legal action in relation to your claim, you must do so within certain time limits.

If you consider that independent legal support would be beneficial to you, please contact the writer at any stage during the course of our negotiations.

We must warn you that many legal organisations/accident management companies who will take your case will often charge a success fee that could ultimately be deducted from your compensation. We can assist you in preventing this from happening by introducing you to the Compensation Claims Assistance Service. They will appoint a specialist firm of solicitors capable of providing independent and impartial advice at no cost to you.

/continued.....

Fraud Prevention Agencies

We will submit to and check details with fraud prevention agencies and other organisations. If you provide false or inaccurate information, we will record this. We and other organisations may use and search these records to prevent fraud and money laundering. We are able to send you further details explaining how the information may be used.

Thank you for your future co-operation.

Yours sincerely



Case Consultant

Direct Dial ☎: 0870 0242748
Direct Fax 📠: 0113 3991490

Appendix C

APIL Accreditation scheme

APIL accreditation scheme ▶



“recognising and building expertise in personal injury law”

Our aims:

- To provide a quality kitemark for personal injury lawyers, their practices and chambers
- To promote a recognised quality standard of competency and expertise
- To provide the consumer with a recognisable independent kitemark of expertise and specialism
- To offer professional, practical, flexible and affordable training, specially developed by and designed for personal injury practitioners, within a structured educational programme

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- senior fellows assessment panel
- training and accreditation committee

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Introduction

The APIL accreditation scheme was established in September 1999 by the College of Personal Injury Law (CPIL).

In 2005 the successful activities of the College were integrated into the APIL membership structure in order to provide a clear single identifiable kitemark to members of the public seeking a suitably qualified lawyer to handle their case.

The accreditation scheme operates in a number of key areas:

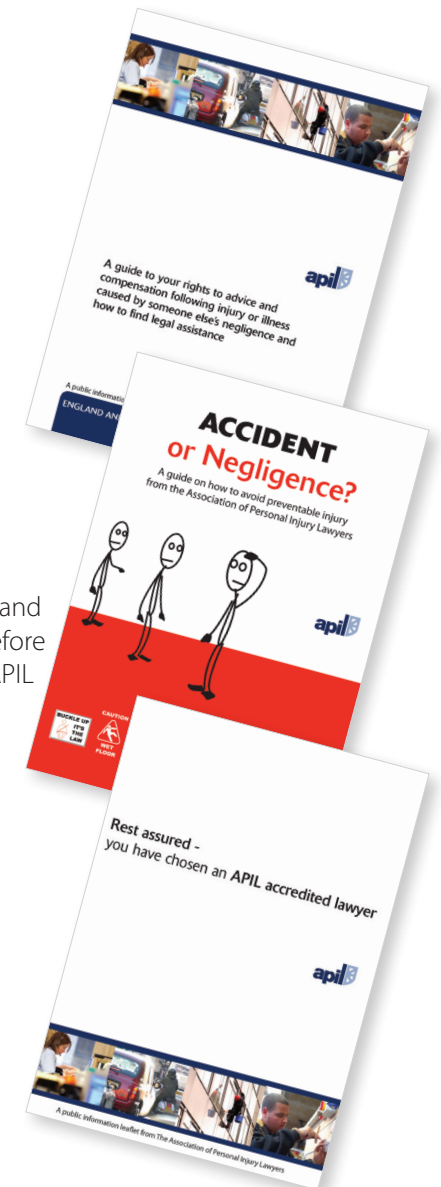
Public information campaign
Individual accreditation
Corporate accreditation for solicitors' practices or chambers
In-house accreditation
Accreditation of training events
Monitoring

Public information campaign no logo - no go

Public confidence in the APIL accreditation scheme is vital in order to meet our objectives and APIL has therefore developed rigorous criteria and procedures to ensure the highest standards of professional service amongst our accredited members. The APIL accreditation scheme is therefore supported by a national public information campaign, directing the public to APIL accredited members and their practices who display the APIL logo and thus carry the APIL kitemark of expertise.

APIL accredited members receive additional marketing and PR support, both nationally and regionally, including the publication and circulation of our booklets:

- "A guide to your rights to advice and compensation following injury or illness caused by someone else's negligence and how to find legal assistance" - circulated to all citizens advice bureaux and libraries in England, Wales, Scotland and Northern Ireland
- "Accident or negligence?" - circulated to schools, MPs, councils, play organisations and CABx
- "Rest assured - you have chosen an APIL accredited lawyer" - designed for the accredited lawyer to hand to their clients



Using the kitemark/logo

Only corporate accredited members may use the APIL logo:



The corporate accredited organisation or office may use the APIL logo, and the words 'accredited organisation' or 'accredited office' on letterheads, the company's website, business cards, and in permitted print and media advertising in accordance with the APIL guidelines.

Individual logos are available for members who have achieved a certain accredited status:



The logo must be placed near or within the members' signature and only demonstrate that the individual is accredited and not the organisation.



Certificates and posters

Certificates and posters are provided to all accredited members to accompany the public information campaign leaflets and further endorse the quality standard.

Governance

The training and accreditation division of the Association of Personal Injury Lawyers (APIL) is governed by an independent Academic Quality Council (AQC) which approves the assessment criteria for accreditation, sets quality standards, approves monitoring that has been undertaken, and makes recommendations for further monitoring activity.

The council membership comprises:

- Head of Legal Education and Training Policy, Solicitors Regulation Authority
- Head of Education Standards, The Bar Standards Board
- Chief Executive, APIL
- Independent academic from another jurisdiction(s)
- Academic members from the university sector
- Independent quality assurance assessor

The council is chaired by the Academic Registrar of the College of Law.

There is no other professional body providing accredited levels of membership, working in tandem with specialised, interactive and structured personal injury law training.

Panels and committees

Four sub groups report to the AQC on an annual basis:

Applications assessment panel

All applications for accredited membership and training are assessed by the APIL applications assessment panel. Applicants are advised whether they have been approved or rejected based upon the APIL marking criteria.

If rejected, individual and corporate applicants will be advised that they do not meet the criteria along with the reasons. Individual applicants will generally be offered a lower level and invited to give further information within a 21 day timescale. Firms may re-apply when they can confirm they meet the criteria.



Appeals panel

The independent appeals panel hears appeals regarding accredited membership applications at all levels and provides final independent assessment.

Senior fellows assessment panel

The independent senior fellows assessment panel considers applications for senior fellowship based on selection criteria approved by APIL's AQC. It also considers selected applications for fellowship based on the marking criteria and standards required.

Training and accreditation committee

The training and accreditation committee oversees and monitors the quality of accredited training, advises on the APIL training programme, and makes recommendations to the AQC for any proposed changes in the assessment procedures and criteria for admission to the APIL accreditation scheme.

Benefits of accreditation

APIL accreditation provides a kitemark of competence and specialist expertise for solicitors and barristers dealing with personal injury claims. This kitemark helps the consumer to recognise expertise and specialisms within the profession. The accreditation scheme demonstrates that an APIL lawyer has achieved a specific standard.

With accredited corporate and individual membership, you will:

- become linked to a major national information campaign, promoting the logo and directing the public to accredited APIL members, their organisation and offices
- benefit from APIL's supporting press and PR activity to support APIL's national public information campaign
- through APIL's consumer website and advertising campaigns, receive independent recognition for you and your organisation's:
 - expertise
 - competencies
 - high professional standards
 - high standards for client care
- ensure your practice/chambers is clearly differentiated.

Areas of expertise

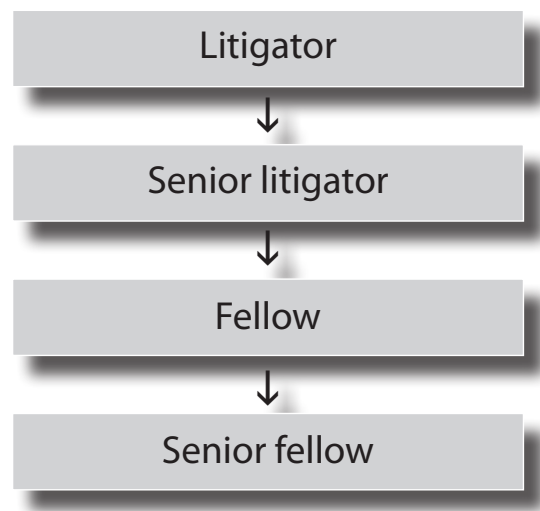
Accredited members may amend their areas of expertise at any time through the members' area of www.apil.org.uk and by linking from "My details".

Individual accreditation

Individual accreditation is free for APIL members. Any practitioner, paralegal or student member of APIL may apply for individual accreditation.

The levels

There are four levels of accreditation:



Senior fellowship is the highest accolade awarded to APIL members.

Eligibility

Eligibility for the various categories of APIL membership is based upon the criteria set out in respect of each of them. The criteria include the range and depth of experience and expertise appropriate to each category. Confirmation of competence is sought through referees.

There are no requirements for an applicant to have had a particular length of experience and, equally, a length of experience alone is not evidence that criteria have been satisfied. All applications will be considered on their own facts and merits, in relation to the criteria.

However, given the nature of the criteria, it is likely that the experience expected of a senior litigator will have taken around five years of PI practice to gain; and that the experience and expertise expected of a fellow will have taken ten years of PI practice to acquire.

Features of individual accreditation

- No charge
- Use of individual accredited logos for senior litigators, fellows and senior fellows within or near signatures
- Senior litigators, fellows and senior fellows may also publicise their individual accredited status, calling themselves one of the following:

- APIL Senior Litigator
 - APIL Fellow
 - APIL Senior Fellow
- } or APIL Accredited Lawyer

- Promotion of senior litigators, fellows and senior fellows under the accredited logo via our corporate banner advertising package within Yellow Pages and Thomsons
- Listings of litigators, senior litigators, fellows and senior fellows on APIL's dedicated consumer information website
- Listings of litigators, senior litigators, fellows and senior fellows sent to enquiries from members of the public, calling APIL's telephone helpline
- Litigators can demonstrate their commitment to the accreditation scheme and ongoing learning path
- Litigators may use the words "APIL accredited member or lawyer" or "APIL litigator" near or within their signature
- Public advised of APIL accredited lawyers' commitment to APIL's consumer charter and code of conduct

Quick accreditation

Please note that APIL members can fast-track their application for accreditation by demonstrating membership of the following panels:

- SRA Accredited Personal Injury Panel - litigator status
- SRA Accredited Clinical Negligence Panel – senior litigator status
- AvMA panel – senior litigator status
- Law Society of Scotland Accredited PI Specialist Panel – senior litigator status

The Law Society's Accident Line scheme run by Abbey Legal Protection also recognises senior litigator status as automatic entry to their scheme.

Members wishing to receive quick accreditation must write to the APIL office stating which panel membership they hold, and confirming that they agree to complete the 16 accredited training hours per annum.

Applying for individual accreditation

There are four forms, one for each level. Applicants should complete the forms as comprehensively as possible and continue on separate sheets if required. The number of referees required increases for each level of membership. Applicants should refer to the separate criteria and guidance notes for each level and submit the relevant number of references required along with their application.

It is preferred that applications are typed wherever possible. Electronic documents for completion are available on the APIL members' area of www.apil.org.uk. Further guidance on which level to apply for can be obtained from the APIL office.

Corporate accreditation

The Association of Personal Injury Lawyers (APIL) introduced a corporate accreditation scheme as part of its public information campaign in September 2005.

APIL's independent research indicated that the public want clear routes and access to accredited qualified lawyers. APIL's accreditation scheme provides firms with the opportunity to differentiate themselves from unqualified, non-specialist providers of legal services. The scheme allows firms to identify themselves as accredited personal injury lawyers and use the APIL accreditation kitemark. The corporate scheme has been integrated into APIL's current individual accreditation scheme, which recognises specialist expertise and skills.

Accreditation is by individual office and there are seven criteria for accreditation:

- The organisation
- Individual accredited status
- Client care
- Training and development
- Supervision
- Quality assurance
- Monitoring

Features of corporate membership

- Use of APIL's accredited logo on business and marketing material, as defined within APIL guidelines
- The opportunity to advertise your firm as "accredited organisation" or "accredited office" in your marketing
- Substantially reduced training rates for all staff at your firm
- Media advice
- Accredited corporate membership certificate
- Each individual accredited organisation or office profiled on the dedicated consumer information website
- Hyperlink facility from the APIL consumer information website to individual APIL accredited organisation or office websites
- Distribution of APIL branded material to CABx and libraries
- Supply of promotional items -booklet, client leaflet, poster, and window sticker
- Further supplies are available for a small fee
- Opportunity to personalize booklets and client leaflets
- Site visits commenting on important issues surrounding your business and client care
- Print advertising – both nationally and locally
- PEOPLE First – consumer linked activity

Applying for corporate accreditation

There is one form for completion which confirms compliance with the criteria. Please see the separate criteria and guidance notes on corporate accreditation for an explanation of the criteria and evidence required. All boxes must be ticked, or expanded upon separately, and the form must be signed by the firm's representative.

An electronic document is available for completion if preferred on the APIL members' area of www.apil.org.uk.

Further guidance can be obtained from the APIL office.

Accreditation of training

APIL training criteria

APIL accredited events must:

- include clear learning objectives
- be aimed at appropriate APIL levels – litigator, senior litigator, fellow & senior fellow – courses should cover no more than two APIL levels (fellow and senior fellow being considered as one level) unless the training is a general update which may cover all levels. APIL members attending a course at a higher level do not qualify for APIL hours
- be of specialist significance for personal injury lawyers
- contain an element of interactive training and learning by experience
- be geared towards the provision of information to keep specialised PI lawyers up to date
- All individual APIL accredited members at corporate accredited firms must attend accredited personal injury update training on an annual basis. This can be either an APIL accredited six hour personal injury update course or, in the case of in-house accredited firms, individual sessions amounting to six hours covering liability, quantum, procedure and funding.

Note: Non-legal courses, for example IT skills, do not qualify for APIL hours.

It is recommended that trainers of accredited events fit one of the following criteria:

- have obtained either senior litigator status or above
- are academic members of APIL
- specialised expert witnesses
- members of the judiciary with a special interest in personal injury law
- fee earners who have attended an "APIL training the trainers" course

APIL trainers, at senior litigator level, (or higher), may claim double APIL accredited hours for delivery of training. APIL provides regular "training the trainers" courses, for those who wish to present.

Evaluation

All events must be evaluated by delegates and the feedback submitted upon request by the APIL assessment panel.

Which training is accredited?

APIL accredits training delivered by a number of means:

- Training within your own organisation or office
- APIL's national open programme
- APIL courses delivered in-house
- Courses delivered by other providers
- Distance learning courses, including DVDs

In-house accreditation (training within your own organisation or office)

In-house accreditation enables accredited members to accrue their APIL hours by attending training delivered in-house. Any firm wishing to be in-house accredited must apply on the relevant form, in accordance with the separate criteria and guidance notes, and agree to be subject to monitoring.

Each organisation or office is required to supply quarterly in arrears a list of courses during the previous quarter, showing:

- learning objectives
- APIL levels
- details of the trainer (with, if appropriate, their APIL accredited level)
- length of course
- a list of those attending claiming APIL CPD hours

Any organisations or offices delivering any training in-house must also apply to the Solicitors Regulations Authority (SRA) for CPD accreditation. Failure to do so makes any training exempt from SRA CPD hours.

APIL's national open programme

APIL provides professional, practical, flexible and affordable training, specially developed by and designed for personal injury practitioners, within a structured educational programme. All APIL events adhere to the APIL training criteria and are offered at varying levels according to expertise and experience.

All courses qualify for SRA, Institute of Legal Executives (ILEX) and APIL CPD hours.

APIL delivers over 150 training events nationally each year, along with 80 regional and special interest group meetings.

APIL training courses delivered in-house

APIL will organise the speaker, materials and expenses and take courses in-house. Any training bought in-house through APIL is automatically APIL accredited.

Firms will usually have applied to the SRA for CPD accreditation. Failure to do so makes any training exempt from SRA CPD hours. For any APIL training courses taken in-house, SRA accreditation can be organised by APIL if desired.

Courses delivered by other providers

APIL encourages other providers to accredit their courses with APIL hours. This is to enable APIL accredited members to have greater choice and flexibility in how they fulfil their training commitments.

All providers seeking APIL accreditation are required to meet the separate criteria and guidance notes set and monitored by APIL's independent Academic Quality Council and apply on the relevant form.

A full listing of accredited events can be found at www.apil.org.uk through the training and external accreditation links.

Distance learning

APIL accredits organisations providing distance learning by the following means:

- Live update one-off webcasts or seminars
- On line regular modular training courses
- Paper based training programmes
- DVDs, videos, CDs, audio cassettes

Each event must last no longer two hours and members may accrue 25% of the 16 hour requirement through distance learning.

All accredited seminars are monitored by the APIL assessment panel.

Maintaining accreditation

INDIVIDUAL

Training logs

To maintain individual accreditation members are expected to keep a record of their training and must accrue 16, APIL accredited, hours personal injury law training annually. A member's accreditation year will start from the date of accreditation. Members wishing to move their accreditation year to fall in line with other CPD years may do so by completing the required number of hours pro rata up to the date of commencement of their preferred CPD year.

Each accredited member's training record will be requested and checked. If a member fails to acquire the 16 accredited hours, their individual accreditation status will be revoked.

Accruing APIL hours

Hours can be obtained through:

- a. Attendance at APIL's national programme of over 150 training events
- b. Attendance at APIL's regional and special interest group meetings – 1 CPD hour may be claimed per meeting
- c. Attendance at APIL's regional forums – 2¾ CPD hours can usually be claimed per forum
- d. Attendance at courses delivered by APIL in-house accredited firms
- e. Attendance at in-house courses which are delivered by APIL or APIL accredited trainers
- f. Attendance at APIL accredited courses delivered by other providers. A full listing of providers and courses can be found at www.apil.org.uk/training
- g. Delivering training for either APIL, other organisations or in-house in accordance with the APIL philosophy. Hours may be claimed at the ratio of 2:1 for every hour of delivery – applies to senior litigators, fellows and senior fellows. Please note a maximum of two thirds (10.5 hours) of your requirement can be accrued in this way
- h. Writing articles for publications/books, at a ratio of 2:1 – applies only to fellows and senior fellows. Please note a maximum of two thirds (10.5 hours) of your requirement can be accrued in this way
- i. Viewing personal injury DVDs produced by APIL accredited distance learning providers*
- j. Participation in web seminars organised by CPD Webinars *

*Please note that distance learning events, as indicated * above, may count towards a maximum of 25% (4 hours) of the 16 hour annual requirement.*



Non-fulfilment of the 16 hour requirement for individual accreditation

An accredited member who has not fulfilled the requirement will have their accredited membership terminated. If the member wishes to be reassessed for accredited membership, the member will need to provide evidence that the requirement has been satisfied in a 12 month period after membership has ceased.

Accredited membership is therefore suspended for at least 12 months until sufficient evidence of compliance is available.

Members working part-time

Part time employees are expected to remain as up to date with their training as their full time counterparts and they are therefore required to gain the full 16 APIL accredited hours each year.

Long term illness/maternity/paternity/parental leave

For an absence of up to three months, accreditation will continue, providing the 16 APIL hours are completed within the relevant 12 month period.

Pro rata hours will be approved if an accredited member has been off work for a period of time of four months or more.

Accredited membership will be suspended in the case of long term absence, i.e. over six months and a request for reinstatement should be made on a case by case basis for approval by the APIL assessment panel.

Retirement policy

An accredited member is deemed to have retired if he is no longer a practitioner in personal injury law. It is accepted that there may be accredited practitioners who no longer have their own caseload but are carrying out an advisory role within their firm.

CORPORATE

Non-fulfilment of the criteria for corporate accreditation

If a firm cannot provide sufficient evidence that it complies with the criteria when it is monitored, the firm will be given six months to improve its standards, after which it will be dismissed from the scheme if the evidence is still not available.

Monitoring policy

To comply with APIL's criteria and standards, a full programme of monitoring activity is in place for all areas of accredited membership and training:

1. Individual membership – training logs and spot checks
2. Corporate membership – remote and onsite monitoring
3. APIL events
4. Training delivered by other providers
5. In-house accredited firms

1. INDIVIDUALS

Training logs

Members must accrue 16 hours of accredited personal injury related CPD annually. The APIL policy is to ensure that the training log for each individual accredited member is checked. A full procedure is in place for reminding members when they will fall due.

Members who have not fulfilled the requirement will have their accredited membership revoked.

Fellowship applications

In addition to approving acceptance at senior fellowship level, the senior fellows assessment panel is asked to consider the assessment of a number of fellowship applications at each panel meeting in order to confirm and approve acceptance at this level.

Spotchecks

Senior fellows are invited into the APIL office on a regular basis to assess a number of applications received during the past week and make recommendations on approved applications taken randomly from files.

2. CORPORATE MEMBERS

APIL monitors compliance of the accreditation criteria and monitoring is undertaken in two ways – remote and onsite monitoring.

Remote monitoring

The records of the firm or chambers, and of the qualified persons named in the application, will be checked against the records of the SRA or The Bar Standards Board, as appropriate, along with the APIL records of individuals named within the application.

APIL carries out a number of “mystery shopper” calls to organisations to monitor quality of service to clients. APIL also checks whether or not members have received client care and PI update training in the relevant period.

Onsite monitoring

APIL conducts a number of monitoring visits to firms annually. This monitoring enables an assessment to be made not only of minimal compliance with the criteria, but also of the effectiveness of the systems that a firm has in place to address those criteria.

Monitoring is undertaken by an independent quality assurance consultant together with a personal injury lawyer.

Judgements are made against the accreditation criteria. In the case of each criterion reviewers consider what evidence is available in relation to it, and evaluate that evidence to enable a judgement to be reached as to whether the organisation is in compliance with the criterion. Recommendations may be made by assessors during the visit.

All firms and branches of firms must renew to confirm compliance on an annual basis, one year after application, and re-accredit after three years.

3. APIL EVENTS

APIL runs approximately 150 training events in each calendar year at all of which delegates are asked to complete an evaluation form and the feedback is analysed upon return to the office by APIL event organisers.

The feedback is distributed to speakers, all events organisers, in particular those responsible for the selection of venues, quarterly to the Training and Accreditation Committee for their consideration and comments, and annually to the independent Academic Quality Council for approval.

Training is monitored randomly by independent assessors to ensure that APIL’s high quality standards are upheld.

4. TRAINING DELIVERED BY OTHER PROVIDERS

All external training providers apply for accreditation on a course by course basis, in accordance with APIL’s training course criteria.

APIL sends along anonymous independent assessors to ensure that the courses adhere to the APIL criteria and that the quality standards are maintained.

PI update materials are requested in advance of the courses to ensure they are fully updated and to the right standard. Other course materials are requested on an ad hoc basis.

All events must be evaluated. Ad hoc monitoring of feedback forms will take place. APIL may ask for the feedback to be submitted for any event that has run.

5. IN-HOUSE ACCREDITED FIRMS

In house accredited firms are asked to provide a listing of forthcoming training events and visits may be made to assess the quality and standard of their training.

Course materials are monitored on an ad hoc basis.

Complaints

Complaints from the public will be dealt with in accordance with procedures outlined in APIL's code of conduct

Complaints from the public in relation to the consumer charter will be directed to the designated client care representative for each corporate member organisation

Redress will be dealt with by the applicant's professional body

Overall monitoring and accreditation policy

If, on review of information, at any stage the APIL assessment panel is not fully satisfied that the required standards are being met, they reserve the right to take whatever steps they consider to be appropriate up to and including withdrawal of accreditation.

If you would like further information regarding APIL's accreditation scheme, copies of the criteria and guidance notes, or if you have any queries regarding the completion of your chosen level of accreditation, please do not hesitate to contact the Accreditation Helpline on telephone numbers:

0115 938 8723

0115 938 8716

0115 938 8720



Association of Personal Injury Lawyers

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