

Solicitors Regulation Authority
Training for tomorrow: A new approach to continuing competence



A response by the Association of Personal Injury Lawyers

April 2014

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. The association is dedicated to campaigning for improvements in the law to enable injured people to gain full access to justice, and promote their interests in all relevant political issues. Our members comprise principally practitioners who specialise in personal injury litigation and whose interests are predominantly on behalf of injured claimants. APIL currently has over 4,300 members in the UK and abroad who represent hundreds of thousands of injured people a year.

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; and
- to provide a communication network for members.

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

Alice Warren, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road

Nottingham NG2 1RX

Tel: 0115 958 0585; Fax: 0115 958 0885 E-mail: mail@apil.org.uk

Introduction

APIL welcomes the opportunity to respond to the Solicitors Regulation Authority consultation on reform of continuing professional development. APIL's own accreditation scheme - recognised as a leading voluntary quality scheme by the Legal Services Consumer Panel in their response to the Legal Services Board - is based on competency; and we are keen for the SRA to embrace a similar approach which will allow legal professionals to continuously improve their skills and move forward in their career. As an organisation working on behalf of injured people, APIL welcomes reforms which will ensure that those who are injured as a result of negligence will receive the best service possible from their legal representative.

APIL can only offer comment on the proposed reforms from the perspective of personal injury law; and the effects of those reforms on injured people. We appreciate that other areas of law have different challenges and considerations to be taken into account.

Problems with the current system

APIL understands the SRA's concerns that the current system of 16 hours mandatory CPD training leads to solicitors and firms just complying with the "tick box" requirement, without regard to whether the hours are useful or appropriate to their current practice. At present, a solicitor can fulfill the mandatory requirement in a number of ways and it is difficult to provide evidence that knowledge and understanding has been acquired. Only 25 per cent of the requirement is face to face learning which, although easy to monitor, can be fulfilled through attendance at courses that are either basic or bare no relevance to the work that the practicing solicitor carries out. We support the SRA's wish to move towards competency based training, which will instead encourage solicitors to self-improve and up-skill, spending time on training which is relevant to them. With this approach, legal professionals will feel that training is worthwhile.

The importance of training

Whatever approach the SRA adopts, it is extremely important that legal professionals continue to undertake training and professional development. To no longer do so would be disastrous for (often vulnerable) clients, who seek advice from those they trust to be competent and have the most up to date knowledge. The law changes continuously, and those who do not regularly undertake training will quickly become out of touch with the latest developments, and this could lead to poor advice, and a denial of access to justice for the client. For example, in the area of personal injury law, there have been huge reforms over the past year as a result of the Legal Aid, Sentencing and Punishment of Offenders Act 2013 and the extension of the road traffic accident portal. Costs' budgeting has become stricter, as have the rules surrounding relief from sanctions. If someone had not trained for a year because it was not mandatory or they did not feel it worthwhile, they would be unaware of all of these developments. This would result in a denial of access to justice for the vulnerable injured person, as they would be left under-

compensated or perhaps denied compensation altogether in what should have been a meritorious case.

We are concerned therefore that the SRA feels (as outlined in paragraph 25 of the consultation document) that a training needs analysis could conclude that no training is required in a particular year - we cannot ever envisage a time of no change, when there is no new case law, no consideration of reform of law, policy or process. Whilst we fully support the need for more flexible, tailored learning, it is important that new freedoms do not condone ignoring training completely. Whilst we support a move to competence, this must include a commitment to keep abreast of the latest developments.

A gradual change is required

Relevant and up to date training is critical in ensuring that the client receives the service that they deserve. The SRA acknowledges that currently, firms and individuals do not see training as something which is worthwhile. The consultation states at paragraph 30 that there is a “culture which is concerned not with the benefits that are derived from education and training but with compliance with the minimum requirements”. Making CPD suddenly no longer compulsory would therefore simply lead to firms and individuals seeing an opportunity to save time and money by no longer training and keeping up to date. This will especially be the case in today’s economic climate, where personal injury firms in particular are feeling the effects of legal reform which has resulted in a shrinking market, and lower annual turnover. Firms will be looking for opportunities to save money, and if training and professional development is no longer mandatory, this may be seen as such an opportunity. As above, the client will then suffer as a result of poor advice.

APIL’s current training approach is proof that when relevant training is carried out effectively, solicitors find it worthwhile and useful in achieving the best results for their client.

The importance of monitoring

Whichever approach to reform the SRA adopts, it must have a clear plan as to how it will monitor competence and training, to ensure that it is of the right standard. One of most effective ways to monitor continued competence is through revalidation of the legal profession as “accredited” in a quality scheme. The quality of training can be assessed through specific criteria, objectives, learning outcomes and pitching it at the right level. If training of the correct standard is not mandatory, firms may take this as an invitation to not put aside any time or money for training.

One size does not fit all

APIL currently has a membership of 4,300, and it represents around 1,700 firms. The size of these firms varies from sole practitioners through to ABSs and the largest PI firms in the country. All practitioners in every location need to be considered when setting out a

competency and training framework. The SRA must approach the reforms with all varieties of firm in mind, and with a view that the approach taken by a large regional firm may not be suitable or appropriate for a sole practitioner. The way forward may be to provide a range of options which would lead to compliance with the new CPD requirements. Larger regional firms with training plans and a support framework with mentors already in place could be allowed greater flexibility, whereas small firms and sole practitioners may need to keep to a model similar to at present, to ensure that suitable training is being carried out.

Comments on proposed options

Options 2 and 3 – a reflective training plan with a mandatory CPD requirement

APIL supports a move to greater flexibility in relevant training, and a focus on reflective development and planning as set out in option 2. We would, however, recommend that the mandatory hours' requirement as set out in option 3 is retained, at least for the time being – for the reasons addressed above.

By introducing a culture of “competence” as opposed to simply mandatory minimum training requirements, the SRA will be setting out a minimum standard to which they expect all legal professionals to meet. The APIL accreditation scheme, the detail of which is set out below, would be one way to ensure that those in the personal injury sector meet additional standards, which are set at varying levels according to competence. These new standards would be over and above the minimum standards currently set out by the SRA.

Accreditation schemes can be helpful to the SRA as they will highlight firms who take training seriously. Such firms are likely to be low risk from a monitoring perspective. This is not just applicable to PI - other accreditation schemes are offered by the Law Society, for example in areas such as conveyancing and wills and probate. Many larger firms would already easily fulfil the requirements of a hybrid option 2/3 approach. These firms already place an onus on training and development through appraisal systems and have in place training plans and frameworks which ensure that practitioners are fully knowledgeable and competent. Smaller firms and sole practitioners practising personal injury may struggle, however, and to ease the transition from the current practice to a reformed approach, the SRA could give guidance that individuals and firms who follow the APIL accreditation scheme (or similar) will be meeting the required standards. APIL is willing to work with those smaller firms and individuals to help them to develop relevant training plans. APIL can also offer support to the SRA by monitoring those who are part of the accreditation scheme, as it does already.

If firms adopted the APIL accreditation scheme or similar, this would also address the concerns with option 3 outlined at paragraph 37 of the consultation document. An accreditation scheme approach would not create a “false certainty” by focusing attention on compliance with a rule, rather than on whether practice is of a proper standard; and there would not be a risk that continuing to prescribe a minimum hours requirement would encourage solicitors to focus on minimum compliance with CPD requirements rather than competence. APIL accreditation is

heavily focused on competence, and ensures that members are taking part in worthwhile training courses that are pitched at the right level for them. APIL also accredits training courses, to ensure that they are effective and meet the required standards. We recommend that a similar approach is adopted by the SRA, to ensure that training courses are appropriate and do in fact provide legal professionals with the required knowledge to best help their clients.

Whilst 16 hours mandatory CPD training may remain a part of the APIL accreditation scheme, the scheme would still offer the flexibility of option 2. As part of accreditation, solicitors are required to undertake *relevant* CPD training, and this in turn ensures that the solicitor reflects on their practice and identifies their own training needs – instead of simply attending training courses for the sake of it. They must also regularly evaluate their training in order to maintain accredited status through revalidation.

This ready-made training plan would help firms to meet the required standards of competence, and ensure that personal injury lawyers remain up to date and competent, offering the best possible service to their clients. This will in turn ensure that vulnerable, injured people are compensated appropriately

APIL accreditation – an overview

APIL has been running a successful accreditation scheme for 15 years. In 2012, APIL introduced a competency framework to provide a development path for those practising personal injury law and to bring about consumer confidence that potential clients have chosen a competent lawyer to help with their case. Much emphasis has been placed on risk to the consumer and transparency, following discussions with the Legal Services Consumer Panel. The APIL accreditation scheme is based on occupational standards of competence, similar to those adopted by the police and medics.

Continuing competence is usually assessed during appraisals, at which time training needs are also evaluated. This allows those legal professionals who are part of the APIL accreditation scheme to continuously re-evaluate their training needs, undertake the relevant training for them, and to continually better themselves in their career as a legal professional.

There are four levels of individual accreditation, according to the expertise of the individual wishing to be accredited. These levels are litigator (usually with less than five years' experience of personal injury law, deemed to be on a learning path to senior litigator status), senior litigator (usually a minimum of five years' experience, self-authorising at all key stages of litigation), fellow (usually over ten years' experience, shares knowledge by leading others outside the firm as well as inside) and senior fellow (usually over fifteen years' experience, someone who has made an outstanding contribution to personal injury law). Only those who have attained senior litigator status or above are listed on the APIL website and promoted to injured people.

Each accredited member must prove competence at the relevant level. This is demonstrated through five key factors; knowledge, know-how, understanding, skills (negotiation, IT), and behaviour. For each level, there are a number of different functions and each standard describes the main functions to bring about effective performance. Each applicant must provide evidence throughout the course of their work that each function has been fulfilled.

APIL also offers specialist accreditation for a number of niche areas of personal injury, including brain injury, spinal cord injury, occupational disease and clinical negligence. Those who wish to be accredited in these areas must undertake a minimum number of hours training which is relevant to that speciality. For example, to acquire the clinical negligence specialist accreditation, the member must have undertaken a minimum of 8 hours clinical negligence related CPD for three years prior. Again, this ensures that all CPD accrued is worthwhile, relevant, and helps towards up-skilling the professional. APIL provides varying levels of training in these areas, including updates for the more experienced practitioners, and further specialized training in areas such as psychiatric and psychological injury for clinical negligence practitioners.

In addition to individual accreditation, APIL also runs a corporate accreditation scheme, based on seven key criteria. By way of example, as a minimum, each branch of a firm must have an accredited senior litigator in regular attendance so that an injured person can consult with a specialist personal injury practitioner in their location. Supervision is also very important, and there must be at least one accredited senior litigator for every ten fee earners that are being overseen. APIL does not accredit branches of firms where all requirements are not met.

Monitoring under the APIL accreditation scheme

All accredited members of APIL must continually demonstrate evidence of knowledge and competence. As above, training courses are monitored to ensure that they meet APIL accredited standards. Accredited members are required to revalidate their accreditation every five years.

When monitoring training, each member has a training log which is checked to ensure that they undertake 16 hours of *relevant* CPD each year. The accredited member must undertake training at the correct level and it must meet the required standard. APIL accredited CPD hours can be obtained in a variety of ways - by viewing webinars, attendance at APIL's regional and special interest group meetings, writing published articles on personal injury, and for senior litigator status or above, a proportion of CPD can be obtained by delivering training for APIL, other organisations, or in-house. APIL accredits other providers and accredits the larger firms that deliver training in house. There are a number of criteria that must be adhered to before and after accreditation is granted.

A wide scope of potential options means that cost need not be a barrier to appropriate training and professional development. For example, some webinars are free, as is attendance at regional and special interest group meetings.

Option 1

As above, we believe that the move to competence should not mean that regular training is forfeited. It must be ensured that firms and individuals do not see training as something that they can simply stop doing because it is no longer mandatory, something which is unnecessary and a waste of time. Our above proposals could be a first step to help change the perception of training which is held by many in the profession. Once the culture of training has changed, option 1 could perhaps then be explored to allow greater flexibility for firms and individuals. Greater flexibility in training should only be permitted for the solicitor who has reached a certain level in their career, however. Allowing a newly qualified solicitor the flexibility of no mandatory CPD hours would be inappropriate.

Whilst we envisage that as time goes on, firms will take more control over their training, moving from option 3 closer to option 1, we do not agree that there will come a time that “reflection might lead to the decision that no specific training requirements are necessary”, as highlighted in paragraph 25 of the consultation document. There is a difference between competence and knowledge, and it is important that as part of being a competent legal professional, knowledge is continually expanded and the individual is kept up to date. Otherwise, there may be devastating effects on the client.

- Ends -

Association of Personal Injury Lawyers

- ▶ 3 Alder Court, Rennie Hogg Road, Nottingham, NG2 1RX
- T: 0115 958 0585 ● W: www.apil.org.uk ● E: mail@apil.org.uk