

**Solicitors Regulation Authority
Training for tomorrow: A Competence Statement for Solicitors**



A response by the Association of Personal Injury Lawyers

December 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 around 3,900 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:

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Introduction

APIL welcomes the opportunity to respond to the Solicitors' Regulation Authority consultation on a competence statement for solicitors. APIL strongly supports, and is at the forefront of, competency based training and development. APIL's own accreditation scheme is based on competency, and our competency standard for clinical negligence is now recognised by the Legal Services Consumer Panel and the Legal Aid Agency¹. 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, and will be put back, as far as possible, to the position they were in before the accident.

Whilst we are supportive of competence, we believe that the SRA's competence statement is too broad to ensure competence across all areas of legal practice, and the specialisms within those practice areas.

APIL can only offer comment on the competence statement from the perspective of personal injury law – including clinical negligence. We have only, therefore, responded to questions within our remit.

Competence statement

Q1. Does the competence statement reflect what you would expect a competent solicitor to be able to do?

APIL is strongly supportive of a requirement for all solicitors to be competent and for competence to be the underlying principle behind training and professional development. In relation to personal injury law, a competent legal representative would ensure that the injured person is able to access the right level of compensation and rehabilitation, which will put them as closely as possible back to the position that they were in before the accident.

We are pleased that the competence statement addresses a wide range of core activities, and requires competence in ethical behaviour, knowledge, technical skills, management of work and communicating with other people. These core activities, in addition to those relating to procedural law, largely reflect those set out in the APIL competency standards.

We do, however, have a number of concerns with the competence statement itself. Our main concern is that the competence statement is too broad and non-specific. We are unsure how it would ensure competence as a stand-alone document. Whilst it addresses the generic skillset required to be a solicitor, it does not address what would be required should a solicitor wish to be competent in a specific practice area. We recognise that this would be impossible to achieve in one statement – the skillset required to be a competent personal injury lawyer is different to that required to be a competent family lawyer or commercial lawyer, for example. To combat this, we suggest that the SRA statement is seen as a starting point, and further work must be undertaken by the individual to remain competent in

¹ The Legal Aid Agency will now accept individuals that hold the APIL clinical negligence specialist accreditation as an alternative to the existing accreditation schemes previously allowed (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358526/headline-intentions-tenders-for-2010-contracts.pdf)

their practice area. Competence in a certain practice area could be achieved by using the SRA's competence statement alongside a more tailored competence framework.

The suggestion that the competence statement can be used in tandem with other competence frameworks is addressed at paragraph 40 of the consultation. Paragraph 40 states that "many firms and in-house legal departments already have in place sophisticated competence frameworks which set out the competence required of solicitors at various stages and in various roles within their own entity". The consultation states that the SRA does not expect the competence statement to replace these entity-based systems, and hopes instead that it will complement them.

We believe that rather than it being an option or recommendation, the competence statement *must* be used in tandem with a competency framework tailored to the practice area of the individual. We are concerned, however, how smaller firms or sole practitioners would achieve this if left without enough guidance and support to do so. It is likely that smaller firms and sole practitioners will require far more assistance than larger firms which may already have a competence system in place.

Additionally, within the competence statement, we believe that the requirement to remain up to date with legal developments should be separated from the requirement to be ethical, and set out as a section in its own right. The need to remain abreast of the latest legal developments is especially important in the context of personal injury law – where there are continual reforms and the law is constantly changing. If a person had not kept up to date in this area for even a couple of months, they could no longer be described as competent. This importance should be emphasised by separating out this requirement from the (equally important) requirement to be ethical.

Threshold Standard

Q4. Do you think the Threshold Standard articulates the standard at which you would expect a newly qualified solicitor to work?

We believe that the threshold standard is suitable for newly qualified solicitors. There should, however, be a requirement that once the threshold standard is reached, the solicitor should continue to up-skill and develop. This approach to competence can be demonstrated in APIL's own competency standards which are split into four levels.

In APIL's competence standards, a Litigator – most akin to the threshold standard – is deemed to be on a learning path to Senior Litigator. They usually have less than five years' experience, and they are not promoted to injured people on the APIL website. Senior litigators usually have a minimum of five years' experience, have their own caseload, are self-authorising at all key stages of litigation and they may specialise. A Fellow usually has over ten years' experience, has satisfied Senior Litigator status, shares knowledge by leading others outside the firm as well as inside and usually has management responsibilities. A Senior Fellow usually has well over 15 years' experience and has made an outstanding contribution to personal injury law. We believe that any solicitor promoted to the public as competent should have reached at least level 4 of the threshold standard (which would be akin to Senior Litigator status in APIL's competency standards).

There should be a requirement that solicitors reach level four or five of the standard within a certain number of years post qualification, to ensure that people are always looking to up-skill and improve themselves. It is important that an injured person receives help from someone who is fully competent and up to date on relevant issues. If there is no requirement to up-skill in the relevant practice areas to remain competent, similar issues may arise as those that exist at present with the SRA's CPD scheme. It is feared that currently, many people simply attend basic training courses that do not help them to develop in their role. If people are allowed to reach the threshold standard and then simply stay there- the same problems arise.

Statement of Legal Knowledge

Q5. Do you think that the Statement of Legal Knowledge reflects in broad terms the legal knowledge that all solicitors should be required to demonstrate they have prior to qualification?

We can only comment on the areas of the Statement of Legal Knowledge which are within our remit. We believe that more detail is required in the "civil litigation" section. As well as knowledge of the pre-action steps, there should be a specific requirement for knowledge of the relevant Pre-action Protocols and, where appropriate, the Rehabilitation Code.

Q6 Do you think that the Competence Statement will be a useful tool to help entities and individuals comply with Principle 5 in the Handbook and ensure their continuing competence?

We are strongly supportive of competence and the requirement for practising solicitors to reach a minimum standard, and to continue to learn, improve and up skill to the next level. We are concerned, however, that the competence statement, together with the threshold standard and statement of knowledge, are too general and would not require a solicitor to necessarily be competent in their area of professed expertise. The competence statement does not address that in practice, a solicitor will most likely be specialised in a particular area, for example personal injury law, and may even be further specialised in that area, for example dealing only with clinical negligence or occupational disease claims. The competence statement should be used in line with a more tailored competence framework – something which larger firms may already have or could easily implement, but smaller firms and sole practitioners may require extra assistance and guidance with. The APIL competence framework is appropriate for all types of personal injury practice.

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