

Legal Services Board

Call for evidence: ongoing competence

A response by the Association of Personal Injury Lawyers

June 2020



Introduction

We welcome the opportunity to respond to this Legal Services Board call for evidence on ongoing competence in the legal profession. APIL champions the importance of legal professionals remaining competent throughout their career via its accreditation scheme – which has been recognised as a leading voluntary accreditation scheme by the Legal Services Consumer Panel. APIL’s accreditation scheme is based on competency, requiring members to provide evidence of competency in key areas via their caseloads/files, and requiring the fulfilment of a minimum yearly training quota, ensuring members remain up to date on the latest developments that are relevant to them. The APIL accreditation scheme provides members with a framework which allows them to “up skill” throughout their career.

We can comment only within our area of expertise – personal injury law – but hope that our comments on accreditation based competency prove useful to the Legal Services Board in relation to ensuring competence throughout the legal profession as a whole.

General comments and overview of APIL accreditation scheme

Benefits of accreditation for members

APIL membership alone is not a sign of competence nor expertise, with members only required to abide by the APIL code of conduct and consumer charter. Well over a quarter of our members do, however, hold some form of accredited status over and above their general membership.

APIL continually highlights the importance of formal accreditation, and regularly encourages all members to consider becoming accredited. Accredited members are provided with a logo which they are able to display on their websites, to reassure clients that they are competent as personal injury solicitors. We also offer a range of accreditation levels, to provide a framework to allow personal injury lawyers to progress and develop their skills through the life of their career. Not only does the APIL scheme ensure competence, it holds additional value for individuals as it provides a framework and clear objectives for those looking to progress to the next stage of their career. Some firms will already have clear career progression plans for individuals in place. The APIL accreditation scheme complements this through its comprehensive criteria which firms can follow when training staff and preparing personal development plans. The scheme also provides a clear progression pathway where otherwise one may not exist.

Benefits of accreditation for consumers

Only those who are accredited at APIL “Senior Litigator” level or above are promoted to members of the public through our injury lawyer search service, to ensure that members of the public can be confident that they are being put in touch with a lawyer who has the requisite experience and expertise to handle their claim. We also offer accreditation in a

range of specialisms, to ensure that members who are specialist in a particular area of personal injury law can tailor their training and development to maintain that specialism, so that consumers can be confident that they are getting expert advice. In addition to providing evidence of the key competencies via their caseloads, all accredited members must undertake 16 hours of relevant accredited CPD training per year, which ensures that those members remain up to date with the latest developments in personal injury law. Those who wish to be accredited in a specialist area (e.g. brain injury, spinal cord injury, occupational disease, military or clinical negligence) 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 in each of the three years prior to accreditation being granted, along with a further 8 hours of general or specialist CPD. Members accredited in a number of different specialisms must complete 8 hours of training in each area of specialism.

The importance of ongoing – and targeted - competence

We believe it is particularly important for legal professionals to remain up to date and competent, if they practise in the personal injury sector in particular, due to continual reforms. Personal injury practitioners who do not remain up to date will put their injured client at risk, as they may fail to establish liability when it could or should be established in law, or risk under-settling the claim. Accreditation, and requiring relevant training to be undertaken as part of remaining accredited, has also become much more important in recent years due to the ever increasing specialism taking place within the personal injury sector.

The APIL accreditation scheme is available to all practising members, from paralegals, legal executives, solicitors and barristers. The changing nature of personal injury law has meant that cases are not run only by solicitors, but a range of legal professionals. The nature of the scheme – work-based and evidenced via caseloads and files to demonstrate that people meet the key competencies – means that it is open to all fee earning staff, and is not discriminatory to those without formal qualifications. It is important that any accreditation framework is tailored to those professionals who operate within it, and allows all who practice to remain competent, and to enhance their skills throughout their career. This is extremely important in ensuring competence throughout all levels of the profession.

What is needed to demonstrate competence, does competence need to be tested throughout a career, and how could it be assessed?

This may cover areas such as:

- **the characteristics or skills that should be part of a competency framework**
- **the types of competence particular to different types of work or legal disciplines (e.g. barristers, legal executives)**
- **different models for competence assurance that you use or are aware of**

The characteristics or skills that should be part of a competency framework

APIL's accreditation scheme, which is based on compliance with a competency framework, requires applicants to demonstrate competence in five key areas – knowledge and understanding, know-how, skill, and behaviours required for effective performance. Requiring applicants to demonstrate competence in these areas means that they must not only be knowledgeable and keep up to date with changes to the law, they must also have the necessary skills to effectively perform their role, and to put their knowledge into practice.

APIL's competency standards were developed by leading personal injury practitioners, past APIL presidents, and senior fellows all specialising in PI law. Also involved were an ex Law Society Director of Professional Standards and Quality Assurance and APIL's independent

Academic Quality Council.

Different models for competence assurance that you use or are aware of

As above, it is vital that competence is tested throughout the legal professional's career.

Accredited members must submit their training logs and revalidate their accreditation on a regular basis.

In order to be accredited as part of APIL's accreditation scheme, applicants must provide evidence of competency in the five key areas listed above. Evidence is gathered via the caseloads and files for which the applicant has personal responsibility. APIL carries out monitoring to ensure that the evidence continues to be provided throughout the time that the applicant is accredited. APIL believes that paper based applications and panels to award accreditation do not provide evidence of competency. This style of application is simply a self-declaration of competence, which may be backed up by a closed shop panel which could be discriminatory. Equally, simply looking at the number and complexity of cases handled does not show that an applicant has carried out their job particularly well, or that in fact, they are competent.

In addition, in order to maintain accredited status, the APIL accreditation scheme requires those accredited to undertake 16 hours of relevant CPD training per year. This ensures that those who are accredited remain up to date on the latest changes relevant to them. That CPD must be "relevant" also prevents the requirement from becoming a mere "tick box" exercise.

Accreditation through APIL's scheme does not require any assessment over and above that which firms should already be carrying out as part of the routine management of staff, and as part of internal appraisal processes. There is no need for applicants to undergo separate assessments or gather separate evidence – competency is assessed from the evidence provided within the applicant's caseload. This means that the process of accreditation is not overly onerous on the firm or individual, and that the accreditation framework can provide a means of setting intended learning outcomes, allowing personal benchmarks to be set against which accreditation of competence can be judged. Accreditation based on competence provides reassurance to clients that their legal advisor is knowledgeable and can handle their claim effectively, while also providing the legal professional with a clear cut pathway for career development if needed.

While individual accreditation puts the onus on individuals to work with their firms to ensure that they are competent, APIL also offers corporate accreditation. Those firms wishing to obtain corporate accreditation are subject to randomised inspections to ensure that they are meeting the required standards.

In what ways can consumers have greater confidence that they have a competent advisor?

This may cover areas such as:

- **the ways consumers can make judgements on the quality of the advice or service that they have received**
- **what role consumer feedback could or should play in helping legal professionals to build their competence and helping to foster trust**
- **the frequency of competence checks that would reassure consumers**
- **different types of consumers, consumer problems or legal activities that are more likely to experience quality issues, or be vulnerable to greater harm from quality issues**

The ways consumers can make judgements on the quality of the advice or service that they have received

Accreditation schemes based on competency provide several ways for consumers to make judgements on the quality of the advice or service that they receive, as they provide a way to distinguish between those who are accredited and therefore competent, and those who have not undertaken such accreditation and therefore may not be competent. We disagree with the long held stance of the Solicitors' Regulation Authority that those without accreditation may be equally as competent as those with accreditation. We maintain that if a person has completed the necessary extra work and effort to meet additional standards, this provides reassurance that the quality of advice and service provided by that legal professional is likely to be higher than someone who is not accredited.

Under the APIL accreditation scheme, consumers can have confidence that they have a competent adviser as the accreditation framework allows those who are accredited to display a quality mark/logo on their website. This will help consumers to be confident about the level of advice that they are going to receive.

Additionally, APIL only promotes those who are accredited at Senior Litigator level or above to the public. This ensures that when members of the public contact APIL, they can be sure that they will only be put in touch with solicitors who are competent and who keep up to date with changes to the world of personal injury law.

What role consumer feedback could or should play in helping legal professionals to build their competence and helping to foster trust

Customer feedback helps to both build legal professionals' competence, and to foster trust in the profession. Often, surveys of the public in general indicate that lawyers – in particular those conducting litigation – are not well trusted. However, feedback from a client on an individual lawyer at the end of a case is far more likely to reveal that the client was satisfied with the service that they received. When putting clients in touch with our accredited members, APIL asks for permission to keep details on file so that feedback can be obtained from the client on the quality of service received. This feedback is carefully monitored on a client by client basis and any queries or issues are addressed by APIL with both the client and the accredited member. APIL also adheres to a transparent complaints process which is published on its website.

Client feedback carried out by the individual's practice also helps to demonstrate that the individual remains competent and this forms part of their revalidation to the APIL accreditation scheme (details on revalidation below). Individual client feedback is a very important part of ensuring competence.

The frequency of competence checks that would reassure consumers

In relation to the frequency of competence checks that would reassure consumers, these must be regular. The APIL accreditation scheme requires those accredited to go through revalidation every five years. It is not necessary for the member to start their accreditation application from scratch, but checks are carried out to ensure that a person continues to meet the standards of competence reflective of their accredited status. As with the accreditation application, revalidation can be integrated into the normal oversight and management of the fee earner, without the need to gather any additional evidence. Revalidation can be done as part of an annual appraisal of performance, for example. To be revalidated as part of the APIL accreditation scheme, the member must provide evidence that the majority of their fee earning time is spent on PI cases, that they are keeping up to date through training, and that their professional work remains of the required standard. Feedback from clients, counsel and peers/supervisors is also taken into account.

Additionally, accredited members must ensure that they have undertaken 16 hours of

relevant CPD, every year. This creates a balance which is not overly onerous, but which ensures that the legal professional remains up to date and competent.

It is important that any competence scheme is targeted – different skillsets are required for different areas of law, and it is not sufficient to have a general, broad-brush approach to ensuring competence. We have previously challenged the effectiveness of the SRA's competence statement, which all solicitors are required to abide by – and we maintain that this is far too broad to be effective. As above, personal injury law has become increasingly specialist in the past couple of decades, and it is important that any competency assessment takes into account this specialism. Different skills are needed depending on the area of work that the legal professional operates, and a broad, vague statement of competence will be ineffective. The SRA's competence statement is a starting point, but individuals must follow a more tailored competency framework, and in particular smaller firms and sole practitioners may struggle to implement this without further guidance and support.

Understanding the current competence assurance frameworks adopted by regulators and the profession is important, as is confirming, qualifying and quantifying any examples of poor-quality services or suggested risk areas. We would welcome your views on this, and it may cover areas such as:

- **practice areas which do or could impose greater competency risks**
- **legal professionals that may be more at risk of competency challenges**
- **existing competence assurance methods used in the sector and their effectiveness**
- **the respective roles of regulators, providers and individuals to assure ongoing competence**
- **any potential barriers to assuring the competence of legal professionals**

Practice areas which do or could impose greater competency risks

As above, we can only comment on ensuring competence in the personal injury and clinical negligence sector. This area of work has become much more specialised in recent times, and it has become more important than ever that accreditation and competency frameworks should recognise this, allowing people to maintain competence in particular specialist areas. Training and a competency framework that does not recognise or allow for specialist knowledge to be gathered will not be effective in ensuring that the legal professional is competent in their area of work.

Existing competence assurance methods used and their effectiveness

As above, we believe that the most effective way of ensuring competence in the legal profession is through accreditation. Accreditation backed by a competency framework enables legal professionals to have a clear path for career development, and allows them to remain up to date with the law, and to continually develop their skills.

We have responded to a number of SRA consultations in the last few years on their changing approach to ensuring competence. As well as challenging the SRA's broad approach to competence, as mentioned above, we also raised concerns about the removal of a mandatory training requirement. While we welcomed the SRA's move towards competency based training, we cautioned against removing the mandatory requirement for 16 hours CPD. Firms and individuals should not be led to understand that ongoing training is unnecessary and a waste of time – it is vital that solicitors are required to maintain competence throughout their careers. Mandatory training requirements are particularly important for those just starting out in their career, and can be helpful for smaller firms and sole practitioners who may not have their own training plans/frameworks in place. A

requirement that the CPD is “relevant” – as is the case under APIL’s accreditation scheme - increases its usefulness, and prevents the requirement becoming a “tick box” exercise where professionals may attend courses with little relevance to them, in order to simply satisfy the minimum hours requirement.

Any potential barriers to assuring competence of legal professionals

The time in applying for accreditation may be a perceived barrier, particularly for smaller firms. However, if a competency framework can be built in to the existing management of staff, as is the case for the APIL framework, then the steps to ensure competence will not be overly onerous. The APIL accreditation scheme provides a readymade framework which will be useful for those firms that do not have their own schemes established.

APIL members are encouraged to get accredited and this is therefore free of charge for APIL members. APIL accreditation also provides less risk of incompetence and helps to reduce costs for professional indemnity insurance.

About APIL

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation which has worked for 30 years to help injured people gain the access to justice they need, and to which they are entitled. We have more than 3,000 members who are committed to supporting the association’s aims, and all are signed up to APIL’s code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives, paralegals and some academics.

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