

**THE BAR COUNCIL**

**THE FUTURE OF SILK**

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS**

**OCTOBER 2003**

The Association of Personal Injury Lawyers (APIL) was formed in 1990 by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has over 4,900 members in the UK and abroad. Membership comprises solicitors, legal executives, academics and over 150 barristers whose interest in personal injury work is predominantly on behalf of injured claimants. APIL does not generate business on behalf of its members.

APIL's executive committee would like to acknowledge the assistance of the following in preparing this response:

Colin Ettinger	Vice-President, APIL
Allan Gore QC	Treasurer, APIL

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

Miles Burger  
Policy Research Officer  
APIL  
11 Castle Quay  
Nottingham  
NG7 1FW

Tel: 0115 958 0585

Fax: 0115 958 0885

E-mail: [miles.burger@apil.com](mailto:miles.burger@apil.com)

## THE FUTURE OF SILK

APIL welcomes this opportunity to respond to the Bar Council's consultation paper on the future of silks, issued in response to the Department of Constitutional Affairs (DCA) consultation 'Constitutional Reform: the future of Queen's Counsel'.

Many of the questions detailed in the Bar Council consultation relate to barristers and are not necessarily aimed at claimant organisations such as APIL. As a result, we do not seek to answer all the questions directly, but in the following paragraphs our response is limited to those issues that are relevant to the victims of personal injury and to barristers undertaking personal injury work.

It is imperative that the victims of personal injury are advised and represented by barristers who have experience of, and expertise in, the field of personal injury law. Personal injury law has developed into a specialist field in its own right, distinct from the general law of torts and civil litigation and featuring distinct bodies of statute and case law. As a general quality mark, the title of QC, as such, is not useful to a personal injury solicitor in identifying a specialist personal injury barrister. Indeed, members often contact APIL to request information on barristers specialising in this area.

Solicitors currently instruct barristers on the basis of information from various sources – colleagues, directories and clerks. It is often said that market mechanisms allow for specialist and skilled barristers to become recognised and it cannot be disputed that, to a certain extent, this is true. As noted, however, in the Bar Council's consultation paper on the accreditation of barristers, issued in 2001:

“[T]he reliability, completeness and uniformity of the existing information may be open to question. It does not operate according to common or agreed standards, it is not comprehensive and it can be entirely subjective”.

We believe a system of accreditation in specialised areas of law, including personal injury, would be more appropriate. In short, accreditation would facilitate the informed selection of barristers. In addition we believe that a system of accreditation would address a widely-held concern about the selection of QCs. It is recognised that the Lord Chancellor's Department (now the DCA) has made great efforts to ensure that selection criteria are clearly defined and objective. Informal consultations, however, continue - a procedure that APIL cannot support because it is neither fair nor transparent.

APIL believes that a system of accreditation for barristers in specialised areas would be much more useful to solicitors. It is imperative, however, that the performance of those accredited is monitored on an on-going basis and the accreditation should be capable of being removed if appropriate. The fact that the QC mark is retained regardless of performance is, in our view, a major fault with the current system.

In referring to the advantages of having an accreditation system for personal injury barristers, APIL would like to take this opportunity to draw the Bar Council's attention to the College of Personal Injury Law (CPIL). CPIL is overseen by an independent academic quality council, which includes representatives from the Law Society, academia and the Bar Council. It provides accreditation for both barristers and solicitors but is open to such practitioners who work predominantly for the claimant only. CPIL does not, therefore, currently administer an accreditation scheme suitable to all personal injury barristers. It has always been the intention, however, as confirmed with Lord Woolf in the early stages of CPIL's development, that CPIL should evolve into a neutral training and accreditation scheme for all personal injury practitioners.

The CPIL accreditation scheme is based on entry to CPIL on one of five levels as follows:

- Associate (for those least experienced and least qualified in personal injury law);
- Member (for those with up to 5 years post qualified experience)
- Litigator (for those with 5 to 10 years post qualified experience)
- Fellow (for highly experienced litigators with more than 10 years experience in practice)
- Senior Fellow (for those with more than 15 years experience and who have distinguished themselves through the years by their outstanding contribution to personal injury law and practice).

Practitioners must apply for membership by CPIL by application form. That form requires applicants to detail their experience and expertise in personal injury law and practice. This information is assessed by an independent CPIL panel, which decides whether the application for membership at a certain level should be accepted or rejected in accordance with objective criteria. An accreditation system for personal injury barristers using, or based on, CPIL would allow a solicitor to instruct an appropriate barrister more successfully and effectively.

In conclusion, APIL recognises the advantages of having what can be termed as a 'kitemark of quality' for barristers. We do, however, have concerns about the process by which barristers are selected for Queen's Counsel and the effectiveness of the QC title as a kitemark of quality as a result.