

Solicitors Regulation Authority (SRA)

**Proposals for a review of professional accreditation schemes run
by the Solicitors Regulation Authority**



A response by the Association of Personal Injury Lawyers

January 2008

The Association of Personal Injury Lawyers (APIL) was formed by claimant lawyers with a view to representing the interests of personal injury victims. APIL currently has around 5,000 members in the UK and abroad. Membership comprises solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants.

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

Roger Bolt – APIL Treasurer

Stephen Lawson – APIL Secretary

Richard Langton – APIL Immediate Past President

John McQuater – APIL Executive Committee Member

Colin Ettinger – APIL Past President

Nigel Tomkins – APIL Fellow

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

Helen Anthony, Legal Policy Officer

APIL

11 Castle Quay, Nottingham NG7 1FW

Tel: 0115 958 0585; Fax: 0115 958 0885

e-mail: helen.anthony@apil.org.uk

Introduction

APIL welcomes the opportunity to respond to the SRA's consultation paper on accreditation. APIL's remit extends only as far as those issues relating to personal injury law (including clinical negligence) and it is therefore not appropriate for us to respond to all the questions in the SRA paper. Before answering those specific questions which do fall within our remit, we have addressed what we feel are the key issues of competency versus specialist based schemes and public education. Please note we have not been able to give a yes or no answer to some of those questions we feel it is appropriate to address.

In addition, as APIL runs its own accreditation scheme for personal injury practitioners, we have attached details of our own scheme as an appendix to this response.

The basis for accreditation: competency or specialisation?

We do not believe that it is appropriate for the SRA to run voluntary accreditation schemes which guarantee that a solicitor is competent. To do so would be to suggest that non-accredited solicitors carrying out work in areas where accreditation is available are incompetent. To effectively ensure all clients receive a competent service from their solicitor, membership of any competency based accreditation scheme must therefore be compulsory. We question whether introducing such a change is necessary or proportionate.

Despite questioning the value of voluntary, competency based schemes APIL does believe that there is a role for specialist accreditation schemes in today's legal market. We believe that well operated schemes which provide recognition for practitioners who offer a specialist service in a particular area of law have a valuable role to play in ensuring the quality of provision of advice in those areas. There are several organisations, including APIL, that run such schemes.

We therefore believe that the SRA should not be offering voluntary, competency based schemes, but should concentrate on ensuring the competency of all solicitors in the area(s) of law in which they choose to practice. We believe that accreditation schemes which seek to promote specialisation within a particular area of law can lead to improving standards, but do not believe that the SRA should seek to replicate existing schemes which do this and which operate effectively.

Public education

APIL believes it is important that the SRA ensures that the purpose of its schemes and the status of those accredited are made clear to the public, whichever schemes it decides to run. In addition, as schemes designed to recognise specialism are complimentary to, rather than in competition with, the SRA's own competency based panels, we believe that it may be beneficial for the SRA to undertake this work with other relevant organisations. This will assist the public's understanding of the various accreditation schemes available and present a clear, consistent message about the purpose and benefits of accreditation.

Consultation questionnaire

Question 1

It is proposed that the SRA's review of accreditation schemes will have the following objectives:

- To clarify the purpose and scope of the SRA's accreditation scheme strategy
- To develop and implement a strategic framework for the development and operation of accreditation schemes which is in line with the SRA's regulatory strategy
- To introduce consistency of approach in the development and operation of accreditation schemes
- To determine in general terms the threshold of competence
- To determine which accreditation schemes should remain within the SRA's scope, and what further areas of law, if any, should be considered for inclusion at a later date
- To determine the future of any schemes which the SRA concludes are not within its scope
- To establish a coherent approach to accreditation
- To provide assurance to the SRA, and therefore the public, that accredited practitioners have been assessed as competent in the areas of law where accreditation schemes exist

Are the above objectives comprehensive and appropriate?

Yes

No

Please explain your reasons.

APIL believes that a review of the SRA's accreditation schemes in order to clarify their purpose and scope and establish a consistent and coherent approach to its schemes will be beneficial. Overall, therefore, we agree that the above objectives are appropriate. We do not believe, however, that the accreditation scheme review is the appropriate forum to "determine...the threshold of competence" for solicitors, as we believe this should fall within the more general scope of the SRA's role as a regulator.

Question 2

Do you agree that a suite of accreditation schemes run by the SRA in all areas of law is undesirable?

Yes

No

Please explain your reasons.

Whether a suite of accreditation schemes in all areas of the law is desirable depends on the nature and scope of the proposed schemes. Due to our view that all solicitors should be competent in the area they work in, if accreditation is proposed a mark of competency, it should be available (and compulsory) in all areas. If, however, membership of an accreditation scheme is purely voluntary, and to be considered as the mark of a specialist, there may not be a need for schemes which cover all areas of law.

As explained above, we believe that there is a need for specialist accreditation schemes in today's legal market. We hope that the SRA will recognise the service that APIL and other organisations which offer specialist accreditation schemes provide and do not see the need to replicate these. We do, however, recognise that there may be some areas of law where specialist accreditation schemes would be beneficial to the public, but do not exist, and believe that the SRA has a role to play in establishing such schemes.

Question 3

Do you agree that the SRA's role in accrediting solicitors should focus primarily, in the public interest, on the protection of the vulnerable client and supporting an efficient justice system?

Yes

No

Please explain your reasons.

We believe that it is important that the SRA ensure that accreditation is available for these reasons, although as previously stated, we do not think that the SRA needs to run these schemes itself. In addition, in order for accreditation schemes to work in the public interest, members of the public must be aware of such schemes and understand their significance. APIL has carried out work to try to alert members of the public to its scheme so that if injured, they can make an informed choice about the solicitor they instruct. As previously discussed with the Law Society and the SRA, we would like to work with others who run or oversee accreditation schemes to give the public a better understanding of their existence and purpose.

Question 8

Do you agree that the SRA should retain the current non-compulsory approach to accreditation schemes until the issue has been fully considered as part of the wider quality assurance debate?

Yes

No

Please explain your reasons.

As stated above, APIL's belief is that if the schemes are competency based, membership must be compulsory for anybody working in the relevant fields. To allow membership to be voluntary would be a sign that, at the very least, the SRA does not know whether members practising in a particular area of law are competent. At the worst, it could mean that a number of those solicitors are in fact incompetent.

Question 9

Do you agree that all accreditation schemes should be based on a set of clear and transparent competence standards?

Yes

No

Please explain your reasons.

We agree that any accreditation scheme should be based on a set of clear and transparent standards. This is important not only for practitioners who wish to apply for accreditation, but also for clients who may want to know how the relevant schemes operate. Our views on competence standards have been expressed above.

Question 10

Do you think that it is possible to identify a set of generic standards which would be common to all accreditation schemes?

Yes

No

Please explain your reasons.

Given that each scheme would be specific to a particular area of law, it is difficult to see how a set of generic standards, other than those related to general conduct which are common to all solicitors anyway, can be set.

Question 11

Is it desirable for applicants for accreditation schemes to be assessed against these competence standards rather than on the basis of their length of experience or size of caseload?

Yes

No

Please explain your reasons.

We believe that it is desirable for applicants to be assessed against set standards, as this is an objective way of indicating that they meet the requirements for accreditation. We do not think that size of caseload is relevant in assessing suitability for accreditation. Length of experience may however be relevant when considering whether a practitioner has reached the standard of a specialist. Experience in itself is not in itself an indication of expertise, as someone who has adopted bad practices for twenty years and who does not keep up with relevant changes in the law may well offer a worse service than a well trained, newly qualified solicitor, but it can indicate that the applicant has significant grounding in the subject and has dealt with a range of issues and situations whilst practising. Assessment against a set of standards may well be suitable in some situations, including acknowledging the applicant has reached the standard of a competent solicitor, but length of experience is likely to be a factor when considering setting a higher standard.

Question 12

Do you agree that the SRA should set accreditation at competent practitioner level?

Yes

No

Please explain your reasons.

As explained above, we are concerned about the SRA using accreditation to recognise competency when solicitors operate in a regulated profession. The SRA sets standards to ensure that all solicitors are properly educated and qualified, specifies annual training requirements and certifies that solicitors are fit to practice every year; is the purpose of this not to ensure that all solicitors are competent? In addition, we would stress that if SRA accreditation is set at competent solicitor level, practitioners should not be allowed to practice in the relevant area of law without being accredited.

Question 13

Do you think that the SRA should be concerned with setting a higher or specialist level of accreditation?

Yes

No

Please explain your reasons.

We think that the SRA does have a role to play in providing a higher or specialist level of accreditation where this is appropriate. We hope, however, that the SRA will recognise those schemes that are already established and concentrate on setting up its own schemes where specialist regulation does not already exist, but would be of benefit to the consumer and the specialist.

Question 14

Do you think that the SRA should consider setting an introductory or probationer level of accreditation in some areas of law?

Yes

No

Please explain your reasons.

Wherever the bar for achieving accredited status is set, whether this is at "competent" or "specialist" level, there will always be people training to reach this level.

If you answered yes to question 14, in which areas of law would this be appropriate?

An introductory or probationer level is essential if membership of the relevant panel is necessary before a solicitor is allowed to carry out work in that area, but it would also be useful in all other schemes to provide a clear pathway to becoming a member of a scheme which may otherwise be difficult to join.

Question 18

Do you agree that all accredited practitioners should be subject to re-accreditation after a fixed period of time?

Yes

No

Please explain your reasons.

As long as accredited practitioners adhere to strict training requirements and the quality and relevance of this training are ensured by the SRA, we do not think that there is any need for a formal accreditation process after a fixed period of time. In effect, accredited practitioners are re-accredited annually, on the basis that they have completed the training requirements set by the accreditation body.

Appendix: APIL's accreditation scheme

APIL's accreditation scheme is now a well established and well supported scheme for personal injury practitioners. The APIL accreditation scheme aims to establish a recognised quality standard; provide professional, practical, flexible and affordable training, specifically for personal injury practitioners; and help the public recognise expertise within the profession. APIL believes that this is important as its independent research indicated that the public wants clear routes and access to accredited, qualified lawyers.

APIL now has over 1500 individually accredited members. This means that almost one third of APIL's practitioner members are accredited and this number has been steadily increasing since the scheme was introduced. Over 250 firms have also been awarded corporate accreditation.

Background

In 1999 APIL and the College of Law formed the College of Personal Injury Law (CPIL), to offer accreditation to APIL members. In the same year, the Access to Justice Act acted as a catalyst for change of the legal landscape, with the proliferation of conditional fee agreements as a means of funding in personal injury cases leading to the creation of claims management companies, greater competition between providers of personal injury services and the increasing use of paralegals in the attempt to drive down costs. This meant that the public were often confused about who offered what service and who they should approach for advice. APIL's members recognised this confusion amongst members of the public and called for personal injury specialists to be recognised as such.

APIL's scheme was designed to recognise different levels of expertise for claimant lawyers rather than replicate or compete with the Law Society's personal injury panel which promoted itself as offering a badge of competence for both claimant and defendant representatives.

Governance

The scheme is governed by the independent Academic Quality Council (AQC), which is overseen and monitored by the College of Law. This does not mean it is an academic scheme – it is a scheme specifically for those who practise personal injury law.

Individual accreditation

There are four levels of individual APIL accreditation, depending on experience. A member applying for accreditation must prove he has both sufficient experience and relevant knowledge of personal injury practice in order to be given accredited status at the level applied for.

Litigator status is intended mainly for newly qualified practitioners and paralegals at the start of their career in personal injury litigation. Litigators run cases under supervision and undertake further training and professional development to enhance their skills. Litigators are recognised as being on a “learning path” and so only once senior litigator level is reached can a member promote himself as being accredited and use the appropriate kite mark.

Senior litigators are practitioners who handle mainstream personal injury litigation as key members of litigation teams, or as individuals with a personal case load. They usually have significant autonomy in deciding the tactical approach to the handling of a case, and carry responsibility for proper assessment and management of risk.

Fellows are practitioners who are able to demonstrate a high level of expertise, and are recognised by their peers as being in a position of professional and intellectual leadership in the field of personal injury law both within and outside their firm.

Finally, senior fellowship is only open to those practitioners who have achieved fellowship status and who can demonstrate outstanding contributions and accomplishments in personal injury law and practice.

Corporate accreditation

As well as individual accreditation, APIL offers firms the opportunity to differentiate themselves from unqualified, unregulated providers of legal services through its corporate accreditation scheme. To gain corporate accreditation, firms must meet certain strict criteria, including a requirement to have at least one senior litigator for every other ten personal injury fee earners.

Monitoring

APIL carries out extensive monitoring to ensure that accredited members reach the high standards that are expected of them.

All individually accredited members must carry out at least sixteen hours of training which is specifically related to personal injury law, every year. Members can accrue these hours by attending APIL events, or APIL approved events. Members' training logs are carefully monitored to ensure they comply with these requirements.

Members of the AQC and APIL senior fellows are invited to attend APIL training events of their choice and report their findings to APIL's training and accreditation committee. Delegates attending courses are also asked to provide feedback which is acted upon where appropriate by the APIL events team, under the supervision of the training and accreditation committee. Such feedback is also considered annually by the AQC.

Other providers which run APIL approved courses are also subject to APIL monitoring. APIL assesses course materials and sends assessors to events, as well as considering feedback forms on an ad hoc basis. Firms that are accredited to provide in house training have the quality and standard of their training assessed and are also asked to submit course materials on an ad hoc basis.

Finally, APIL carries out extensive monitoring of the firms to which it has awarded corporate accreditation. This includes site monitoring, conducted by independent assessors, to ensure that a firm's policies and procedures meet APIL's accreditation criteria. In addition, APIL considers firms' records and the qualifications of the people named in the application, carries out "mystery shopper" phone calls to monitor the service provided to clients, and checks past conduct and attendance at client care courses.