

Legal Services Board

Consultation on approaches to quality



A response by the Association of Personal Injury Lawyers

1 June 2012

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 4,000 members in the UK and abroad who represent hundreds of thousands of injured people a year. All APIL members agree to abide by the APIL code of conduct and consumer charter.

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:

Katherine Elliott, Legal Policy Officer

APIL

3 Alder Court, Rennie Hogg Road

Nottingham NG2 1RX

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

Introduction

APIL welcomes the opportunity to respond to the Legal Service Board's (LSB) consultation regarding approaches to quality.

APIL is committed to ensuring that consumers are provided with quality legal services. In support of this, and in light of the changing legal landscape, APIL has recently extended its accreditation scheme which was originally established in 1999 and integrated into our membership in 2005. These developments include the introduction of competency standards and promote further specialisation of accredited members in areas of expertise such as clinical negligence and brain injury claims.

Our accreditation scheme is a practical, experience and evidence-based initiative which provides a quality mark of competence and specialist expertise for solicitors and barristers dealing with personal injury claims. This kitemark helps the consumer to recognise expertise and specialisms within the profession. There are four levels of entry: litigator; senior litigator; fellow; and senior fellow. Litigators are deemed to be on a learning path and work under supervision. The scheme demonstrates to the injured person that an APIL lawyer has achieved a specific standard. It also ensures that solicitors are rewarded for providing quality legal services despite the changing legal landscape that they currently face, and helps members of the public to identify where quality practices exist through a simple visual kitemark of standards. The accreditation criteria and scheme are monitored by an independent academic quality council and the scheme is reviewed on an annual basis.

Consultation Questions

Q.1. In your experience, when consumers do not receive quality legal services, what has usually gone wrong? Where problems exist, are these largely to do with technical incompetence, poor client care, the service proving to be less useful than expected by the client – or something else?

The public are often unable to measure the quality of legal service. Certainly in the personal injury field injured people are often one time users of the system with little or no experience of the legal process. If frustrations do arise they are often in relation to how the client's expectations were managed. When members of the public contact APIL for advice or to complain about the service they have received from a personal injury solicitor the most common problems are:

- the client has not received the level of damages they were expecting;
- the case has taken a lot longer than they expected;
- the terms of the retainer were not outlined in enough detail to them; or
- the case was delegated to a junior member of staff.

The first three are all usually dealt with by managing a client's expectations in a case from the initial stages of the case. These expectations should be continually managed throughout the life of the claim. This means that the terms of the retainer and any costs expectations are explained clearly at the outset; timescales are clearly defined where possible; and potential levels of damages are detailed. All of this information should be amended accordingly as the matter progresses during the process of the claim.

An injured person is often faced with a number of funding options; this can often be an extremely complex part of the process. It is essential that the client fully understands these. For example, it can be difficult for a client to understand the concept that they have primary liability for legal costs even though their provider might be working on a "no win, no fee" basis; or the fact that it might be necessary to take out After the Event insurance (ATE) if no Before the Event insurance (BTE) is in place.

In addition to this there is a number of high profile marketing campaigns, often run by claims management companies (CMCs), which can cause further confusion. Clients often believe that the CMC they contact is the company/legally qualified professional that will be running their claim and do not in fact realise that the CMC is the

marketing tool that will then refer their case on. This is simply a case of confusion about how the personal injury marketplace currently operates.

Q. 2. Would it be helpful if the regulators approached issues of quality by looking separately at different segments of the legal services market? Which segments do you perceive as being greatest risk to consumers?

When the Solicitors Regulation Authority (SRA) was developing a new method of regulation for the legal profession in light of the changing legal landscape, APIL responded to the consultations stressing the importance of the purpose of regulation. In our view this is essential for the protection and benefit of clients. We emphasised that in order to do this, all segments of, or professionals within the legal marketplace should be regulated to equal standards and this should transfer also when looking at the quality of services provided. All elements of the legal marketplace should have their quality of services judged, assessed and accredited on equal ground.

For example, a personal injury client will usually be a lay client and a one-time user of the system. It is essential that whoever that client chooses to deal with their claim has a profession-wide set of standards that are being adhered to.

Q. 3. How can regulators ensure that regulatory action to promote quality outcomes does not hinder (and where possible encourages) innovation?

The SRA has recently developed a new handbook to set out the standards and requirements that it expects from its regulated community for the benefit of the clients they serve. The SRA revoked its rules and Code of Conduct and replaced these with the Handbook and Outcomes-Focused Regulation in anticipation of the changing legal market. The SRA introduced Outcomes-Focused Regulation because it believes it

Focuses on the high level principles and outcomes that should drive the provision of legal services for consumers. It replaces a detailed and

prescriptive rulebook with a targeted, risk-based approach concentrating on the standards of service to consumers. There is greater flexibility for firms in how they achieve outcomes (standards of service) for clients.¹

Therefore, the SRA has already provided targeted, simplified risk regulation that should promote a healthy, diversified and competitive legal marketplace. To support this, any promotion of the level of quality that should be provided must follow the same principle.

Q. 4. What balance between entry controls, on-going risk assessment and targeted supervision is likely to be most effective in tackling the risks to quality that are identified?

Tackling the risks to quality that are identified in the consultation paper is extremely important. These types of risk, where the client is the vulnerable person in the process and the end result may be of detriment to them, need to be risk assessed and managed throughout the course of running a case.

Option A in the paper identifies entry levels, training and accreditation and assurance of competency as on-going risks². These risks can be managed through most accreditation schemes where applicants are required to undertake accredited training courses in order to earn a stated number of CPD hours each year. This is to ensure that accredited professionals are proactive in remaining up-to-date with current practice. It is essential that the training is up-to-date and meets high standards. As well as presenting its own training events, APIL monitors and accredits training delivered by other providers and in-house within solicitors' firms.

Option B in the paper identifies the requirement for increased consumer empowerment. This is crucial when creating a competitive and diverse marketplace. Information regarding consumer choice, the existence of panel firms and how the

¹ <http://www.sra.org.uk/solicitors/freedom-in-practice/outcomes-focused-regulation.page>

² *Approaches to quality: A consultation paper*, Legal Services Board, March 2012, page 14 paragraph 38.

marketplace operates, including levels of qualifications and accreditation of professionals, should be transparent to the consumer so they can make an informed decision about who they will choose to run their claim.

Option C in the paper refers to targeted supervision which is proportionate and risk-based by regulators or on behalf of regulators, but touching all who deliver a legal service (i.e. not reserved to lawyers). As part of APIL's Corporate Accreditation scheme offices are expected to maintain the highest levels of client care, continue to train and develop staff as well as ensure that junior staff are supervised on a day-to-day basis. Supervision ratios are closely monitored. The requirements are:

CRITERION 5: SUPERVISION – ON A DAY-TO-DAY BASIS

The accredited organisation or office has effective arrangements for the supervision of all lawyers undertaking personal injury work.

COMMENTARY AND GUIDANCE

Effective supervision involves the provision of advice on and authorisation of important steps in litigation, as well as more general responsibilities for the management of a team. Supervision includes the provision of mentoring and appraisal, and the identification and meeting of training needs.

Effective supervision depends on the skills of the supervisor (which should be developed through training), on properly documented procedures, and on the span of supervisory control.

Within an accredited organisation or office, a supervisor should always be of a higher membership category than the persons supervised; save that there is no requirement within the corporate accreditation scheme for the work of a senior litigator (or above) to be supervised. However, within the staffing structure of an organisation or office it may well be the case that a senior litigator reports to a more senior colleague. Similarly, where an organisation or office has a number of persons accredited as senior litigators or above,

one such person may well exercise managerial responsibilities in respect of the others.

EVIDENCE

The following evidence must be available:

- *Fellows are responsible for the personal supervision of no more than ten senior litigators*
- *Senior litigators are responsible for the personal supervision of no more than ten litigators*
- *Litigators are responsible for the personal supervision of no more than ten other support staff*
- *Adequate training in supervision and management is provided to all litigators, senior litigators and fellows with supervisory responsibilities*

Standards such as this exist to ensure that clients receive competent and quality services from their legal advisor, whoever that might be.

Q. 5. Quality can also be affected by external incentives and drivers. Some examples include voluntary schemes (for example the Association of Personal Injury Lawyers (APIL) Accreditation), consumer education and competition in the marketplace. How far do you think these external factors can be effective in tackling the risks to quality that exist? Which external factors do you think are most powerful?

The legal landscape is under-going massive reform, not only with the introduction of ABS's but also with the major reforms relating to funding. Quality of service has, and will continue to be affected by fixing costs. Quality and cost cannot be divorced and where costs are fixed at the lowest level, as with the low value RTA scheme quality will be eroded. Firms are already using the lowest level of fee earner to make these cases profitable. The pricing structure is such that it doesn't include any incentives to fight for the best offer for the client. There is

also the additional complication of insurers dealing directly with these claims in-house. We know from the Financial Services Authority (FSA) report³ that only three per cent of third party capture offers are rejected, but when injured people obtained independent advice they were awarded 274.95 per cent or £1,003.07 more in comparison. The Law Society Gazette reported only on 17 May 2012 that insurers were still trying to under settle claims and remove independent advice from the process⁴.

As the country's leading organisation acting on behalf on injured people, we are committed to the on-going training of our members, and to doing all we can to help people understand the need for quality independent legal advice and where to find it. We currently have over 1,100 individually accredited members and around 260 offices which have corporate accreditation - these are offices which are committed to upholding the high standards of the accreditation scheme and where there is at least one lawyer accredited at one of the highest levels who is committed to supervising a maximum of ten other personal injury practitioners to the highest standards. We are not a referral agency but we do advise claimants to seek out the three senior levels of accreditation: senior litigators, fellows or senior fellows, all of whom are likely to have at least five years' experience of handling personal injury claims, and many considerably more.

Of course, a scheme like this cannot be effective unless people are aware of it and of what different accreditation levels mean, and in addition to our consumer website, we have leaflets and posters on display in main libraries and citizens advice bureaux through the UK as well as solicitors' offices. We have also produced a leaflet for accredited members to hand directly to clients. The leaflet aims to give the client peace of mind that they have gone to the right person. Providing the public is educated on the existence of accreditation schemes such as APIL's then members of the public will have the correct tools to make informed decisions about who to choose to run their case. Therefore, in order to

³ FSA third party capture risk report 2009

⁴ Law Society Gazette 17 May 2012 Letters to the editor-Naive strategy, Boris Kremer

minimise risks to the consumer we would recommend that membership of a competency based accreditation scheme should be compulsory for all legal professionals. This could promote further competition within the marketplace as more power surrounding informed choices will be handed over to the consumer and expectations from the consumer may be better managed from outset.

Any scheme designed to recognise specific specialisms, such as clinical negligence, should be complementary to a basic accreditation scheme.

Q. 6. Another possible tool for improving quality is giving consumers access to information about performance of different legal service providers. How far do you think this could help to ensure quality services? How far is this happening already?

As detailed above, APIL is not a referral agency; however, we do receive enquiries from members of the public who are seeking legal advice. Using our database of qualified members we ask the injured people for their contact details and, as appropriate, try to put them directly through to an accredited member to help them progress their case quickly. If this is not possible at the time, we give details of the accredited member or members for the client to call. We monitor how the firms answer the calls and follow up on the enquiry and the service received. Furthermore, we promote APIL's accreditation kitemark on our website, in libraries and in citizens advice bureaux throughout the UK, and through our accredited members. Education of the public and existing kitemarks is key to the success of any accreditation or recognition of a legal professional's expertise.

Publishing the number of complaints made against a law firm only provides a snapshot of the quality of service being offered. The size of firm, number of fee earners employed and turnover should all be considered.

Q. 7. What do you believe are the greatest benefits of such transparency? What are the downsides, and how can these be minimised?

Providing consumers with access to information about performance levels will undoubtedly prove useful in promoting quality services in the legal marketplace. Review of performance levels should however be independent in order to ensure that the system is fair.

APIL has recently launched new levels of specialisms within its accreditation scheme which offers further transparency on members' expertise to consumers. The newly created standards serve two purposes. They can be used by offices and legal professionals for the development of their staff; APIL is using these as entry to its accreditation scheme.

Q. 8. The table below (Figure 3) gives some examples of how risks to quality can be mitigated and actions that can be taken by regulators to ensure this happens. Can you suggest any other actions that can be taken?

Regulators should be able to carry out consumer satisfaction research on an ad hoc basis through voluntary agreement. This could prove to be a useful tool. Consumers would have confidence in a legal service provider that participated in such a scheme and potentially give it a competitive advantage. A transparent complaints process should also be easily accessible along with the facility to feed back on their experience.

Q. 9. Which of the possible interventions by regulators do you think likely to have a significant impact upon quality outcomes?

All of the regulatory interventions are important and should be treated equally. When used together as a programme or scheme they will ensure that consumers only receive quality legal services.

Q. 10. To what extent should the LSB prescribe regulatory action by approved regulators to address quality risks?

It would appear to be a sensible approach for the LSB to prescribe regulatory action by approved regulators to address quality risks. APIL suggest though that there should be a consensus amongst the regulators on this and the prescription, together with periodic review and feedback to identify any patterns of concern or areas of special importance that needs further scrutiny.

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