

REVALIDATION OF APIL INDIVIDUAL ACCREDITED STATUS – APIL SCOTLAND

Guidance for assessors and candidates

The APIL revalidation scheme is designed so as to impose minimal additional work on firms. It should be integrated with the annual appraisals of performance which most firms now operate. This mirrors the approach being taken in the medical profession, which is also based upon appraisal.

Revalidation is not a process of re-demonstrating the competences required on first accreditation. It is a review of performance, drawing upon evidence about professional practice, with the aim of confirming that the individual has a continuing involvement with personal injury casework, continues to demonstrate the behaviours which underpin effective performance, continues to keep their professional knowledge up to date, offers adequate and appropriate advice to clients, and that any adverse incidents have been appropriately addressed and lessons learned from them.

The matters to be discussed in the course of appraisal, which should give rise to the evidence to support revalidation, will come from the following areas:

- General information providing context about the nature of professional practice: this should be confirmation that the majority of fee earning time continues to be spent on personal injury cases and, for Senior Litigators, that the caseload continues to involve a substantial proportion of Court of Session or Sheriff Court Ordinary Cause cases.
- Keeping up to date – the use of CPD to maintain and enhance the quality of professional work: evidence should come from personal CPD logs.
- Review of practice – evaluating the quality of professional work: this will come from the outcomes of file reviews conducted in the normal course of practice; and from action taken in response to any adverse event (see below).
- Feedback on practice – how others perceive the quality of work: this will come from client satisfaction surveys, peer or supervisor reviews of files, and feedback from counsel.

Who can conduct an appraisal?

In the normal course of events the appraiser should be the person conducting the routine annual appraisal within the firm. As the appraisal focuses on good legal practice generally, whilst it is desirable that it should be conducted by someone who is themselves a senior and experienced personal injury lawyer, this is not essential. For example, a person who conducts the routine appraisal of a senior litigator who heads a personal injury department may well be the senior or managing partner of the firm.

If the accredited individual is the senior partner or a sole practitioner, then an outside appraiser may be used. A sole practitioner may wish to use as an appraiser an outside lawyer who assists the firm by conducting file reviews. If an external appraiser is required and the accredited individual cannot identify a suitable appraiser, APIL can organise an external appraiser (such appraisers are able to charge for their time in conducting the appraisal).

It is the responsibility of the individual to ensure that the appraisal takes place and, if the firm's internal appraisal arrangements cannot be used, to find an external appraiser acceptable to APIL. The person conducting the appraisal either should be a person who conducts regular supervisory reviews of the files of the individual or should review a sample of the files of the individual prior to the appraisal interview.

If you need any guidance on who can act as your appraiser, or if you would like APIL to organise an external appraiser for you, please contact the APIL office. Exceptionally, APIL may agree to an appraisal being conducted by a person who is not your usual supervisor, nor an APIL external appraiser. If you wish to use such a person, please contact the APIL office.

When should appraisal occur?

A formal appraisal leading to revalidation is required every five years, as a condition of maintaining personal accreditation.

APIL will contact accredited individuals 12 months before revalidation is due, and will supply a copy of this revalidation pack. 12 months' notice is given so that the appraisal may be combined with any annual appraisal due under the internal appraisal systems of the firm. A reminder will be issued 3 months before the deadline for revalidation if the completed form has not been returned by then.

What information will the appraiser require?

Prior to appraisal, the individual should ensure that the appraiser has access to:

- Information about the individual's caseload: the proportion of fee earning time spent on personal injury matters, and the split between ~~fast track, multi-track and~~ specialist (e.g. clinical negligence or brain injury) cases.
- The log of CPD undertaken over the last five years.
- Significant outcomes of cases handled, especially those concluded in the last two years.
- Information about any adverse* events arising from the work of the individual, including claims on indemnity insurance, formal complaints to the regulator upheld by the regulator, limitations placed on delegated authority from ATE insurers, any judicial criticism of the handling of a matter. *The accredited member should inform the assessor of any adverse incidents, which occurred at previous firms, within the last five years.
- Feedback from supervisors and colleagues: for example the results of any 360 degree appraisal conducted by the firm, feedback from training sessions at which the individual has been a presenter, feedback from counsel instructed, feedback from file reviews.
- Feedback from client satisfaction surveys conducted by the firm.
- Record of any client complaints about the work of the individual (resolved within the firm), record of compliments from satisfied clients.

Where the appraiser is the supervisor of the individual it is likely that they will have all of this information to hand. However, if the appraisal is not being conducted by the supervisor, it is the responsibility of the individual to ensure that the appraiser has the above information available to them.

Conducting the appraisal

Discussion in the course of the appraisal should focus on the way in which the individual has learned from reflecting on their own professional practice, including ways in which practice has been modified in the light of CPD, lessons learned from any adverse events, and responses to feedback from clients and colleagues.

Following the appraisal the appraiser should complete the relevant form (for Litigator, Senior Litigator or Fellow). If any adverse incident has occurred, brief details of it should be given on a separate sheet. If the appraiser is unable to confirm that a candidate displays any of the groups of behaviours which underpin effective performance, details should be given on a separate sheet. If there are concerns about the quality of advice offered to clients, details should be given on a separate sheet, on an anonymous basis to preserve client confidentiality.

The appraiser should initial each of the numbered statements on the form, if he or she is satisfied that the criteria therein are satisfied. At the end of the form, the appraiser should sign either the statement recommending revalidation, or the statement that revalidation cannot be recommended.

Revalidation should be recommended if:

- The appraiser is satisfied that the candidate engages in sufficient personal injury work (managerial work in the case of a Fellow) to provide evidence of the behaviours listed on the form, and
- The appraiser is satisfied that those behaviours are actually demonstrated, especially with regard to the proper standard of professional work, and
- The files demonstrate that adequate and appropriate advice is provided to clients, and
- There have been no adverse incidents or, if there have been, the appraiser is satisfied that the candidate has learned appropriate lessons from them, and that they are unlikely to recur.

If the appraiser is unable to recommend revalidation, the case will be further reviewed by APIL prior to a final decision being taken.