

**THE GENERAL COUNCIL OF THE BAR
POLICY COMMITTEE**

ACCREDITATION

A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS

MARCH 2001

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ACCREDITATION

1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 5000 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.

2. APIL welcomes the opportunity to respond to this consultation document, which seeks views on the accreditation of barristers in defined areas of practice. APIL works to improve legal services available to the victims of personal injury to ensure that such victims receive the specialised services that they require and deserve. It is believed that a scheme of graduated accreditation for both barristers and solicitors in personal injury practice would contribute to such an improvement.

3. APIL would like to take this opportunity to draw the Bar Council's attention to a scheme of accreditation already in existence for claimant personal injury practitioners, which is independently administered by the College of Personal Injury Law (CPIL). CPIL is overseen by an independent academic quality council, which includes representatives from the Bar Council, the Law Society and academia. 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.

4. The accreditation scheme administered by CPIL is based on the model that APIL advocates for all personal injury practitioners. Answers to specific consultation questions refer in great detail, therefore, to the current CPIL accreditation scheme.

Is there a need for further specialist accreditation schemes?

5. 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, featuring distinct bodies of statute and case law. In addition, personal injury practice requires particular skills, such as the ability to digest and understand complicated medical and other expert information. Victims of personal injury, entitled to receive compensation, rely on lawyers to obtain compensation that will allow them to purchase essential care and medical treatment or replace earnings that are of central importance to their lives. Claims are predominantly pursued against insurance companies, which are experienced in litigation and able to afford the best legal advice and representation. To equalise the position between the parties, it is extremely important that the personal injury victim has access to a barrister with specialist legal skills and the ability to represent claimants when they are vulnerable.
6. 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 is recognised in the consultation paper, however, “the 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.” Indeed, members often contact APIL to request information on barristers specialising in personal injury law.

7. Accreditation would improve the service provided to both solicitors and the victims of personal injury because it would:
 - Allow a solicitor to identify easily those barristers specialising in personal injury law;
 - Allow a solicitor to select a barrister on the basis of objective information (in that the accreditation would be granted on the application of objective and verifiable criteria);
 - Provide reassurance to the personal injury victim that the specialist services required are being provided.

8. In short, accreditation would improve the general service provided by the Bar by facilitating the informed selection of barristers. APIL are, however, fully aware of the risks posed by accreditation schemes. Accreditation should not merely become a ‘marketing gimmick’ and an excuse to charge high fees but should represent a reliable kite mark of quality. Nor should the issue of accreditation disappear once it has been granted. Barristers should be required to establish that they deserve to retain the accreditation achieved. There is also a risk that accreditation schemes can create a “closed shop”, that is accreditation for a small number of barristers only, and create difficulties for new practitioners to obtain required experience and develop expertise. Any accreditation scheme should ensure that such unfairness could not arise.

Is the existing regulatory framework adequate to secure uniformly high standards of professional service in given fields? If not, would accreditation contribute to doing so?

9. The existing regulatory framework does assist in securing high standards. It prevents, as far as possible, a barrister accepting instructions in a case outside

his or her competence. It does not, however, assist in ensuring that a solicitor can easily identify barristers specialising in personal injury practice. This would be the main advantage, as noted above, of accreditation. In addition, APIL believes that an accreditation scheme such as that administered by CPIL could contribute to securing high standards of professional service. This is because the CPIL scheme combines accreditation and training. To retain accreditation granted by CPIL, practitioners must undertake appropriate training. Such training not only secures, therefore, but also improves the professional service provided by accredited personal injury practitioners.

Do the existing immigration scheme or the proposed FLBA children law scheme provide suitable models for accreditation in other areas?

10. As stated above, APIL advocates the accreditation scheme administered by CPIL as the most appropriate for personal injury practitioners and is, therefore, outlined below for information. As also stated, however, APIL recognises that CPIL would have to undergo some reform before it could be said to be a suitable accreditation and training system for all personal injury barristers.
11. The CPIL accreditation scheme is based on entry to CPIL on one of 5 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).

12. Practitioners must apply for membership of CPIL by application form. The application 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.

What would be required to achieve accreditation in a given area? Would attendance at specified courses suffice? What role should consideration of a barrister's existing practice play? If so, by what standards and by whom? Should there be a portfolio of work? Should there be peer review of actual cases undertaken by that barrister? Should there be a test?

13. Accreditation should depend upon an independent panel's qualitative analysis of an applicant's skills in personal injury law and practice, based on information provided by the applicant and references provided by colleagues and the judiciary. This analysis should depend upon the objective satisfaction of pre-determined criteria. The criteria used to assess expertise should include the type and number of personal injury cases handled and the extent to which the applicant has managed or led those cases. As with the CPIL scheme, the length of time spent in personal injury practice should serve only as a minimum requirement for entry at certain levels. Accordingly, APIL advocates that a test and / or peer review should be unnecessary.

14. The CPIL scheme operates on the basis of the above. Practitioners apply by the completion of an application form. The current forms are attached for information.

15. In addition, APIL believes that it is crucial that practitioners should be required to undertake training in order to retain accreditation. Under the CPIL scheme practitioners must complete a defined amount of training suitable to that practitioner's level of experience and expertise. This requirement, and commitment by practitioners, is extremely important. It allows for the

recognition of a practitioner's skills but also ensures that those skills are at the very least, maintained, but in all likelihood, improved.

Should there be a requirement that an applicant undertake a certain proportion of his or her practice in a given field? How would such a system cope with individuals who may only undertake an occasional case in the field in question but who keeps up to date in the area of law?

16. APIL does not feel strongly that there should be a requirement that an applicant undertake a certain proportion of his or her practice in personal injury law. The less personal injury work conducted, however, the less likely it is that a barrister would be able to develop the experience and expertise in personal injury law and practice. With regard to CPIL, such a person would, in all likelihood, fail to achieve membership at a level higher than that of "associate". The same would apply to individuals who undertake only occasional cases in personal injury but who keep up to date with developments as expertise in personal law depends on much more than just legal knowledge.

Should an applicant be required to provide references? If so, from whom? What, if any, role should the judiciary play in commenting on applicants' abilities? To what extent should these views be taken into account?

17. With the accreditation scheme in place within CPIL, references play an extremely important part in the accreditation process. Applications are submitted and assessed on the basis of information provided by the applicant. References are essential to ensure that the applicant's assessment of skills and expertise are reliable and should be taken into account for this purpose. A glowing reference would in itself, however, be insufficient justification for entry to CPIL at a particular level. References are required from practitioners and / or the judiciary well acquainted with the work of the applicant.

18. References from the judiciary become increasingly relevant to the assessment of applications for entry into CPIL at the higher levels i.e. fellow and senior

fellow. Such positions depend on the applicant's ability to follow complicated cases from initial instruction through to trial. The judiciary are well placed to advise upon how well an applicant can prepare a case, identify issues and perform at trial.

What, if any, fairness and equal opportunities concerns do those issues raise?

19. APIL does not believe that the above necessarily causes any particular potential for unfairness. Accreditation schemes allow solicitors to identify barristers with particular levels of expertise and experience. There is no proposal, however, that such a scheme should become compulsory. It would be open to solicitors to instruct counsel without accreditation.

20. In addition, it is important that any accreditation system has an independent appeal panel, as does CPIL, to allow any applications to be reconsidered.

How would any given scheme cater for the general practitioner who occasionally undertakes a case in the field in question and the specialist practitioner working outside the field in which he or she is accredited? How would it cater for those transferring fields?

21. Unless accreditation was compulsory, solicitors would not be prevented from instructing a barrister without accreditation in a defined area of practice. Nor would it prevent an accredited barrister taking instructions in a case outside the field in which he or she is accredited. CPIL currently operates on this basis. APIL does, however, work to raise both public and practitioner awareness of the importance of instructing a member of CPIL to ensure that the claimant receives the advice and representation required. If the Bar Council endorses and adopts accreditation for personal injury practitioners, it should fully support such a system and act similarly.

How would those starting out in practice with a limited track record be able to achieve accreditation? Should there be provisional accreditation? Should there be a “waiver” for established practitioners?

22. It is noted above that accreditation schemes pose potential difficulties for new practitioners and prevent their development. A graduated scheme of accreditation can prevent this occurring. The CPIL scheme allows inexperienced but qualified practitioners to enter CPIL at the lowest level of entry i.e. associate. Associates must undertake suitable training to retain membership of CPIL. This allows for new practitioners to train and acquire expertise as they are gaining experience in practice and, further, allows such practitioners to apply for membership of CPIL at a higher level, when that is appropriate. Such a system, therefore, not only prevents problems arising for new practitioners but actively encourages and allows them to develop their skills.

23. There is no need to consider granting waivers for established practitioners unless the accreditation scheme was compulsory. It is hoped, however, that even the most experienced barristers would like their expertise recognised through an accreditation scheme.

Who would run the scheme?

24. APIL certainly envisages that CPIL would be able to administer the scheme. This is subject, of course, to the necessary reform mentioned earlier, i.e. the evolution of CPIL into a neutral accreditation scheme for all personal injury practitioners, whether acting predominantly for the claimant or defendant.

To what extent would accreditation deprive a person of the ability to choose his or her representative? Does this have any human rights implications and if so how serious are they? What are the competition implications of an accreditation scheme?

25. If the accreditation scheme is voluntary, as is CPIL, no person would be deprived of the ability to choose his or her representative. Accreditation schemes facilitate informed choice. APIL strongly believes that informed choice is in the best interests of the personal injury victim as it would assist in ensuring that the victims of personal injury receive an expert and specialist service from the Bar.

Conclusion

26. APIL would be happy to provide further information on CPIL to the Bar Council upon request. In addition, the CPIL Board would like to invite the Bar Council to discuss, in further detail, the development of CPIL into a college that provides accreditation and training suitable to all personal injury barristers, whether acting for predominantly for claimants or defendants.

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