

PRESIDENT'S SPEECH TO APIL CONFERENCE

17 APRIL 2018

My speech to you last year was all about the need for fairness and the importance of incremental gains. It has been an unusual year. While we all played a waiting game to see what the Government intended to do on key issues like the discount rate and the small claims limit, we never missed an opportunity to talk about the issues. Meanwhile, work continued on other important projects. We have continued to drive home the message that the key to cutting costs in the NHS is for the NHS to stop causing needless harm. We have kept up the campaign for a fairer system for paying compensation to bereaved families in England, Wales and Northern Ireland. And we have launched a new initiative to emphasise the purpose and importance of compensation.

But the main headline is, of course, the Civil Liability Bill or – as the Government has called it – a ‘new Bill to cut car insurance premiums’, finally coming clean on what we have all known from the start. The Bill has come almost a year after the Prisons and Courts Bill – and you could be forgiven for thinking it is a nice anniversary present for the insurance industry.

Of course, the insurance industry sees it as perfectly correct to link whiplash reform with the discount rate, and to promise motorists a saving of about £35 a year on their insurance premiums. But, for me, it is fundamentally wrong to focus on the money. Injured people must be at the heart of this and must have access to the damages they need to put their lives back on track when they have been injured through no fault of their own.

The principle of 100 per cent compensation is fundamental to how our tort system works and should never be at risk from the desire of insurers to make more profit. We should not forget that insurance exists to provide a source of funds to meet the responsibility of the wrongdoer

to put things right as far as possible. How those funds are allocated to individuals should be based on the needs of injured people, and is a matter for the law.

The truth is that the cost of motor insurance is a combination of many factors, not least the soaring cost of vehicle repairs.

The truth is that – under this Bill - people with life-changing injuries will almost certainly return to a situation where their compensation will not meet their needs, and people with genuine whiplash injuries will have their compensation restricted.

The truth is that in the past four years the cost to motor insurers of bodily injury claims fell by 21 per cent and the average motor premium went up by 20 per cent. Those figures are, incidentally, from the Association of British Insurers.

But that cut in costs is clearly not enough. The insurers want more. And to get it, they are dangling in front of us the princely sum of £35 off the cost of our insurance premiums. £35. The cost of a round of beers in the hotel bar.

It is not unusual for money and big business to be placed ahead of truth and honesty, but that will never stop us working to make an impact on behalf of those we represent. The value of evidence – real evidence – may have been degraded in recent years, but we will not shirk from using evidence as a basis for telling the truth. And by that I mean the actual truth, not false arguments based on old news or facts taken out of context and distorted beyond all recognition.

APIL will be at the forefront of challenging this Bill, and I know that evidence, truth, and the commitment of our members will help us in that work.

We will challenge this on every platform available to us. We will challenge it, in both principle and in detail, through briefings and amendments, as the Bill progresses through Parliament. We will challenge it in the media and on social media, continuing our ongoing policy of zero tolerance to misinformation and misdirection.

We will also fight it in the back rooms, where we are working with those who have the ear of ministers, explaining how the system works and doing everything we can to protect the interests of injured people. Yes – it is critical that we put every ounce of our energy into efforts to change proposed reforms in the public arena. But it is also crucial to recognise that, if the Government has set up a working group to examine the potential implications of its proposals, we have to be in it. We must be there, in the room - eyeball to eyeball, with those who seek to undermine everything we represent. The alternative is to abandon our responsibilities to injured people. That would be unthinkable and unconscionable.

There is almost nothing about this Bill to commend it. But I have caught myself thinking recently about just how much worse it could have been if we had not made it crystal clear that APIL was prepared to take the strongest measures against the Government's worst transgressions against injured people.

Let me be perfectly clear. We want the discount rate to remain where it is because that is the correct rate for people with life-altering injuries. We don't yet know for sure what the outcome of parliamentary debate will be, and we are marshalling all our political resources for this battle, as I have said.

But it is important to remember that the startpoint for this debate is not a discount rate of 2.5 per cent – a rate which was far too high for far too long and which has caused immeasurable hardship. We are fighting from a much fairer position because the Government knew that APIL was fully prepared and committed to go to court over the issue. We won that battle.

Now we have to dig in for a long campaign. APIL will always speak truth to power and be the organisation that holds that power to account, through all necessary and available means.

Not so very long ago the Government was keen on getting rid of compensation altogether for whiplash injuries. At every given opportunity we warned that we believed this would be unlawful. Again, we don't know what the outcome will be on tariffs for whiplash claims because the fight is far from over. But there is still a fight to be had.

Over the past ten or so years we have seen off a barrage of attacks on the small claims limit. As you probably know, this is not something which will require the permission of Parliament. And this time around, the Government is so determined to increase the limit that it made its position clear even before hearing from the Justice Select Committee, which has conducted an inquiry on the issue. We have been in front of that committee – in person and in written evidence - to argue the case for retaining the limit. We have also been in the back rooms, explaining why the plans are almost unworkable.

In those meeting rooms we have argued that, if the Government is hell bent on changing the limit, the change should not be introduced across the board, but should be made step by step. Of course we were disappointed that all road traffic claims will be subject to a £5,000 limit, but we have to be encouraged by the reprieve we have won for all other categories of case.

Now, what I want, and what we all work for all the time, is all-out victory in every battle we take on for injured people. My passion for the correct – for the unequivocal outcome - remains undimmed. But the hard fact is that the world does not always work like that. This understanding does not make us work any less hard to achieve the right outcome, but it can make us more creative in our approach.

I referred at the beginning to the importance of making incremental gains, and there have been some important gains to report in the past year:

Way back in August 2015, the Government declared its aim of introducing fixed costs in clinical negligence claims with a value of up to £250,000. So began years of hard work behind the scenes, reprising our earlier arguments that there is room for a more efficient system in lower value clinical negligence claims but that fixing costs above cases valued at £25,000 would represent an unacceptable barrier to justice for injured patients.

Then came the news that Lord Justice Jackson was also keen on fixed costs for all cases up to £250,000. Some of you may remember that he came to our conference last year to discuss his proposals. A fundamental plank of our argument to both the Government and Jackson was that fixed costs must be allied to a bespoke, streamlined process. Eventually, last October, we heard that the arguments had been accepted and the Civil Justice Council is to look at a new bespoke process and fixed costs for clinical negligence cases up to £25,000.

One of our most common battles is against a tendency to force different kinds of claims into procedures which simply won't work for them. This was one of the dangers when the Government's attention turned to noise induced hearing loss cases.

APIL representatives spent months and months in tough, behind-the-scenes negotiations as part of a Civil Justice Council working group discussing the process for deafness cases. Last September, the CJC published a report which recommended a separate, bespoke process, with fixed costs, for these claims. Similarly, in holiday sickness claims, the Government has rowed back from forcing claimants into existing protocols and a new bespoke process has been developed.

A more subtle change has been a softening of language about personal injury and compensation in the media. Unless you make a point of studying this, the change is almost imperceptible, but it is there, I promise you. There are fewer screaming headlines about the compensation culture, and a greater focus on the nature of people's injuries, the impact on their lives, and a greater willingness to hold the NHS to account.

This changing tone has extended to reports from the House of Commons justice committee following evidence sessions about both small claims and the discount rate. The purpose of the cross-party select committees is to hold the Government to account, so we welcomed recognition from the justice committee that, on whiplash reform, the Government is aiming at the wrong target.

The committee challenged repeatedly the arguments and assumptions made by both the Government and the insurance industry about the discount rate. It criticised the Government's failure to provide proper evidence to support its arguments. It also accepted arguments that, in the past, claimants have often had little choice but to make risky investments. This was the first time I can recall anyone taking this crucial argument seriously. It advised caution when setting the discount rate based on the investment patterns of the past, without further evidence on investment behaviour.

The Government, of course, refused to accept this recommendation. But the fact remains that influential parliamentarians are beginning to see a clearer picture of what is going on here, and to share our thinking about the needs of injured people.

Changing the perceptions of the press, Government, the political classes and the public, is like turning an oil tanker around. It takes time, and care and commitment. There is no room for doubt, or hesitation or complacency, no matter how hard things get. Since APIL's earliest beginnings almost three decades ago we have all been totally committed to fighting the

cause of fairness for injured people. The prevailing and powerful interests of money and big business make our work even harder but our collective passion and commitment will ensure we remain in the fight and provide a strong and unwavering voice for injured people.

Thank you