

PRESIDENT'S SPEECH

APIL ANNUAL CONFERENCE, THURSDAY 18 MAY 2017

The theme of this conference is fairness for injured people. It must also include fairness for their families as well. How do we achieve that? Is our approach working? Are there signs that the tide may be turning? It would be easy to think that nobody is listening. It would be easy to think the fight is lost and that it's simply pointless to engage.

Today I want to tell you why I think that would be wrong; why I believe we are making a real difference to the injured people we serve; why I believe we must keep on pushing on behalf of those vulnerable people who need our help; and why I think we should do it with heads held high.

The underlying principle of all our campaign work is to achieve fairness for injured people and their families. Not fairness for injured people balanced with fairness for well-heeled insurance company shareholders, but just and equitable solutions which provide a level playing field to help us to get the right results for the people we represent.

I don't know exactly when injured people started to be viewed as second class citizens, playing second fiddle to tight wallets and hard hearts. I don't know why it is so difficult for people to understand that being injured – being in pain and having your life completely turned upside down – is probably one of the worst things that can happen to anyone.

I'll never understand why accountability for getting things wrong is perfectly acceptable in all other walks of life but seems to be easily forgotten when someone has been needlessly injured. Or why it's OK for the State to pick up the tab for dealing with the aftermath of injury instead of the person who has caused it, through his insurance company which has received premiums for the purposes of doing just that. It's often forgotten that these are not people who are the victims of unforeseen and unpreventable mishaps. They have been injured – completely needlessly – through no fault of their own, but through someone else's negligence. That is the whole point. It is the only point. And I am very proud of all my friends and APIL members who work so hard to help injured people get their lives back on track.

While 'fairness' is an easy concept to invoke in the abstract, in practice it seems to be difficult for some to apply. Indeed, the minute it means paying compensation to ensure people have a chance to try to restore their lives as best they can, we are constantly reminded that we are in economically difficult times.

Reaction to the change to the discount rate is a case in point. First came the usual lip service from the insurance industry about the importance of catastrophically injured people receiving the right amount of compensation. So far so fair. But it seems the 'right' amount of compensation is only 'right' if it is also 'fair' for defendants, insurance companies and premium payers. This should be simple – right means putting the victim of negligence back, as far as possible, in the position they would have been had the negligence never happened. In my experience they would much rather it had never happened. I've lost count – as I'm sure you have – of the number of times an injured person has said to me "I'd rather just be the way I was".

When Phillip Hammond announced that £6billion would be set aside for the NHS to be able to cover compensation under the new rate, the response from the insurance industry was predictable and hysterical – the change in rate was ‘extraordinary’, ‘absurd’, ‘crazy’. As if it hadn’t known it was coming. As if the industry hadn’t had years to prepare. But while insurers should have been preparing for the reform which they knew was coming, many of them were resting on their laurels, reaping the benefits of a rate which was too low, while people with life-changing injuries were under-compensated or had to risk saving their compensation in higher-risk investments. The obvious point that claims against the NHS are only successful when negligence has been proven by the injured person continues to be ignored. But it is a point we will continue to make in the media and to the Government.

So while injured people are at last afforded some relief by the prospect of finally receiving fair compensation from those who are responsible for their injuries, insurance companies are panicking about their profits and their shareholders’ dividends. So they immediately pass on the cost to their customers, while all the time seeking to blame rising premiums on the people who have been injured in the first place and their representatives, led by APIL. Were there any stories about insurers going out of business because they could no longer make ends meet? Of course not. Was the idea that injured people are somehow responsible for the setting of premiums accepted hook, line and sinker by some opinion formers? Of course it was. Their primary duty is to make a profit for their shareholders and the sooner that simple fact is accepted by those opinion formers the sooner injured people and their families will be treated with the dignity and fairness our society rightly aims for.

In the current political climate we can’t say for certain what will happen as a result of the discount rate consultation. But you can all be sure of one thing: APIL started fighting for a fair discount rate six years ago. We are not going to shy away from that fight now.

And that's exactly what we do – we stand up to challenges day in, day out. We do the right thing. We are in it for the long haul. We catch tigers by the tail and we don't let go. We don't give up. That's the kind of tenacity that pays off . That's the kind of tenacity I promise you we will maintain in my year as your president.

But while we must of course look ahead at the battles to come and the campaigns we need to win, I hope you'll bear with me while I reflect for a moment on the recent past, because that's where we can find the evidence that persistence really does pay.

It's easy now to forget how many years we were campaigning for a fund of last resort for workers who could not trace the insurers of the employers who had injured them. Ministers came and went, APIL presidents came and went, Government officials sometimes listened, sometimes warned us off, out of sheer exasperation, it seemed. Sometimes, the politically astute thing to do was to shelve the argument temporarily. But we never stopped campaigning, alongside colleagues from charities and the unions.

We were always professional, always polite, and always really really persistent. Eventually, the argument caught the attention of Lord Freud, a Government minister with an interest in the issue, and the scheme for mesothelioma victims was introduced.

Now, I'll be the first to admit, that this is not enough. Not by a long way. We must do more to ensure the scheme includes all workers who are suffering serious illnesses but who cannot obtain the compensation they need because of tracing difficulties. The point is that this is a good start. It's a foot in the door. Campaigning isn't always about winning the war, but about winning the battles. You cannot hope to conquer Everest without having a base camp.

When it comes to winning battles, I'm firmly in the camp of cycling coach Dave Brailsford, whose philosophy is to focus on making marginal gains. When he took on 'Team Sky' he focussed on the little things – sleeping in the right position, encouraging his cyclists to take their pillows with them when they went away, helping them avoid illness through better hygiene. The rest, as they say, is history.

Well, Sir Dave does not have a monopoly on the principle of winning by increments. In our campaign work, those small battles can have an enormous impact on the lives of the people we represent and put the landscape in good shape for challenges to come

One of the activities I am particularly proud of is the legal interventions we make and the impact they have on people in small but very important ways.

Our intervention in *Broadhurst v Tan* helped to ensure that if a claimant beats his own offer to settle he is not subject to fixed costs. The case also has wider implications for the control of bad behaviour.

Our intervention in *Qadar v Esure* helped to ensure that cases which come out of the portal and go into the multi track are not subject to fixed costs.

In *Yates v HMRC and APIL* our intervention helped to ensure the smooth running of the most serious asbestos cases by ensuring that families of deceased employees could obtain details of work histories from HMRC. In this case, the judge even acknowledged all parties for their collaborative approach.

Professional, polite, and very persistent.

These cases may not make banner headlines, but they help to give people the tools they need to ensure their cases are settled fairly and efficiently – they are about making the legal structure work - ensuring that the nuts and bolts under the bonnet work fairly. That may not be glamorous but it is effective. In an environment in which defendants can use the weapon of fixed costs to put claimants in legal straight-jackets we need to do all we can to redress the balance.

The Third Parties (Rights Against Insurers) Act 2010 finally came into effect in 2016 after years of quiet work with civil servants behind the scenes to correct technical problems which made the legislation unworkable. We now no longer have to go through the cost and time of resurrecting defunct companies to bring claims for long latency diseases. Most of you probably won't be aware of this work because our discretion was requested. and we were happy to be discreet if it meant getting the job done.

In a very long campaign it's important to maximise every little opportunity. That's what we did in Northern Ireland in 2015, when bereavement damages were trailing behind even the paltry amount available in England and Wales. Three years earlier, the Northern Ireland Executive's finance department had launched a consultation on the future existence of bereavement damages. The consultation effectively ran into the sand due to lack of interest. When the third anniversary of this moribund consultation approached, we used it as a platform for raising the issue again - and struck gold. By gaining cross-party – and cross-community - support for our campaign, the NI Executive came under considerable pressure to increase the level of bereavement damages from £11,800. In less than a year the level was raised to £14,200, with a commitment to review it every three years. This incremental gain keeps the door open for lobbying work on this incredibly important issue across England and Wales, and in Northern Ireland.

Much of our work north of the border has been a marathon rather than a sprint, with years of work involved in making regular contributions to the legislative process and providing media comment. The Courts Reform (Scotland) Act transformed the way personal injury is handled by the court system in Scotland, with a 'headline' reform of increasing the sheriff court limit from £5,000 to £100,000. It received royal assent in November 2014 – seven years after it started life as the Civil Courts Review. Our members in Scotland worked with APIL staff throughout those years, responding to the initial review consultation, responding to the report of the review, providing political briefings as the Bill moved through the Parliament, and providing written and oral evidence to two parliamentary committees. While the general direction of the legislation didn't change, many other narrower arguments were successful and will make a big difference to how cases are run. Pre-action protocols are now compulsory for personal injury cases in Scotland, for example. We are still monitoring the work of the new specialist personal injury court in Edinburgh, and working with the court to iron out problems - ten years after the review started.

This is the quiet work done day in, day out, behind the scenes, alongside our high-profile campaign work. Sometimes the work we do is almost completely off the radar, either because we've managed to persuade someone not to do or say something, or because something is so sensitive that we can't say anything about it. We are loud when we need to be. We are quiet when we need to be. But we are always strong and we are always persistent in fighting for the needs of those people we have all chosen to represent in circumstances when they, and their families, need help the most.

I am very proud of that work which, over the years has helped us to build APIL's reputation for credibility and authority – a reputation which helps to ensure that we almost always have a seat at the table. I am, of course, under no illusion that we will ever be able to gate-crash number 11 (or even 10) Downing Street with 24 hours' notice – not until we can persuade the powers that be that injured people are a priority rather than a nuisance. That doesn't mean we won't keep trying.

We may not always be loud, but we are always strong. And as we do this work, we gain political momentum for future campaigns.

So, what does that seat at the table give us? Opportunities. Opportunities to show the value of research and clear argument. Opportunities to challenge so-called 'evidence' that is often just accepted rather than critically appraised. Opportunities to demonstrate our passion for the cause of injured people, to be assertive, but to keep cool heads.

Could attitudes be starting to change? What are the signs? Is it significant that the NHSLA is to be renamed NHS Resolution with a focus on quicker settlements and prevention of catastrophic injury? Is it significant that the justice committee gave the insurance industry the first really hard time I, at least, can remember over its approach to, and its rhetoric about, whiplash claims? Is it significant that the weakness of the insurers' arguments about small claims reform was so exposed in front of the Prisons and Courts Bill committee? I think it is. Of course, sound research and consistent arguments don't always win political fights, especially when we're pitted against the huge, well-resourced interests of big business. It's always going to be an uneven fight – not just in this country but throughout the world, and it was ever thus. But David did beat Goliath. If we can keep chipping away, working to change the hearts and minds of as many as we can, we can still make a real difference. Incremental gains can make a very big difference in the long term and we are in this for the long term.

There is much for us to achieve if we keep clear cool heads, keep on pushing and carry on working together. We have to make people see that, as a society, we need more compassion and we need to make sure injured and vulnerable people are treated fairly. The fundamental point is this - a society will be judged on the basis of how it treats its weakest members. This is not easy in a society where money is tight, lives are busy and self-absorbed, and attention spans are short. But it is the right thing to do.

We do not now – and nor will we ever - sit idly by while hard-pressed people are duped into believing that their astronomical insurance premiums are the result of providing fair compensation to people who should never have been injured in the first place. Insurance costs what the insurance industry says it costs – that's it.

I personally am committed to making people understand that one day, the people who are confined to their homes, unable to look after themselves or their families could be any one of us and that they deserve to be treated fairly by society. So we had all better sit up, take notice and try to be better, fairer human beings.

No-one knows for certain what will happen after the General Election. We're just hearing that the Conservative manifesto, to be published at 11.15am, will promise a ban on cold calling for personal injury. This is something we have campaigned for, for a very long time, as you know, and, if it's true, it will be very welcome. The manifesto will also promise a crackdown on bogus whiplash claims. As always, the devil will be in the detail, and we will be examining that very carefully. You can be sure that we will be saying to the next Government - in terms – that fairness for catastrophically injured people means a realisation that the way the discount rate is calculated is fair and accurate; that nobody with a claim of £5,000 should be left alone in the small claims court facing a legally represented defendant; that fairness for people with clinical negligence claims means the creation of an efficient, workable claims process before they are forced into the straightjacket of fixed costs.

Those are the things we will need to deal with - but do not forget that at the heart of all of this is an injured person and their family whose lives have been turned upside down through no fault of their own.

Someone else's negligence has put them in that position.

They need our help. That is why we are here and that is why we do what we do.

Thank you