

Association of Personal Injury Lawyers

GROUPS

Minutes of North East Regional Group Meeting 7th March 2019

Copthorne Hotel, Newcastle upon Tyne

Chair		APIL REG Coordinator – Rebecca Maddock, Irwin Mitchell APIL REG Secretary – Paul Morpeth, Winn Solicitors
Speakers		See below
Attendees		See attendance list

APIL BRIEFING: PI/Clinical Negligence and Civil Liability Bill & Executive Committee Update **John McQuater, Atherton Godfrey Solicitors and APIL Executive Committee Member**

A copy of the presentation slides are available and filed with these minutes.

The Key points were as follows:

- In relation to QOCS it may be that only individuals are entitled to rely on it rather than companies.
- In particular Defendants don't like it as they claim wealthy people use it unfairly especially in claims against the NHS!
- Part 36 late acceptance: The Defendant stance in fixed costs is to accept it late. It is used as a tactic to make a claim less economic for Claimants to pursue.
- FD: This is extremely unfair as it only applies to Claimants. Defendants can still lie and this includes Defendant Solicitors. There should be a sanction such as having their defence struck out if they lie or raise inappropriate allegations against a Claimant.
- In relation to Brexit, there is a fear that health and safety standards as well as consumer protection will be diluted as most derive from EU law.
- There is a worry about what happens if a British citizen is involved in an RTA in an EU county post Brexit.
- Legal Aid for inquests: If state funded these could be an option for regal support especially in cases where there are several counsel on the other side and make it more equal for individuals.
- Question: Who is the PI Focus point of contact: Answer: Helen Blundell.

- Civil Liability Bill update:

Damages are going up as Claimants are not always accepting first offers as need to help fund Claimant's costs, due to having to pay success fee out of damages.

Whilst the Bill has received Royal Assent we can still argue over whiplash definitions and tariff amounts.

In relation to the discount rate review, the first review will be political as no experts will be involved in this decision. The second review will be 5 years after. The Scottish proposals may be a good indicator as to how it will be set in England and Wales – 0%? This would be good for Claimants. Good money would be on 1% but if you have a JSM coming up soon then you should stick at -0.75%.

Regarding the IT required for the reforms it will be important for ADR and Medco as they will be key features of them. However we are still a long way off the IT resources being confirmed as ready.

“Fundamental Dishonesty and Serious Injury Claims”

Tom Vonberg

A copy of the presentation slides are available and filed with these minutes.

The key points were as follows:

- This is largely about damage limitation for Claimants.
- There is a difference between claims (accident circumstances) and claimants (heads of claim) being fundamentally dishonest.
- Fairclough: 10% of claim recovered following surveillance but claim still succeeded. Now it's more likely that the claim the whole claim will be struck out under s.57.
- FD is now used by defendants as a negotiation tool as no disincentive to use them.
- Minor exaggeration can be used as negotiation to get smaller settlements – explicit on DWF website.
- We should advise all clients re FD consequences at outset of claim in writing and verbally including committal proceedings for contempt of court.
- Grossly exaggerated claims in clin neg including accepting old offers have led to 3 months in prison and a large costs order against claimant.

- LOCOG v Sinfield: Best test for FD, “substantially affected the presentation of his case.... In a way which potentially adversely affected the defendant in a significant way”. **This creates a wide application of the FD principle.**
- Substantial injustice test is hard for claimants to prove, eg: a protected party induced to make an exaggerated claim by family/friends/LF.
- Specials need to be understandable to the Claimant rather than presented as a set of accounts – Yipp, J.
- In SI cases especially we need to tell client of FD at outset as it concentrates the mind in giving evidence throughout the case.
- It is best not to be too specific about the client’s disability eg: They have good days and bad days rather than can never do things anymore.
- Be robust against allegations of FD and bring them to the court’s attention.
- If we receive surveillance evidence, get directions for rebuttal evidence from client and experts.
- If we can’t avoid discontinuance try to get defendant to confirm they will not proceed further if we do so.
- If there are any mitigating reasons for discontinuance i.e. health grounds then highlight them.
- If necessary try to get out as early as possible to achieve damage limitation.
- Hopefully we will soon get some good judicial guidance criticising defendant’s conduct re FD which we can then use against them.

Closing remarks

- Rebecca and Paul asked members to raise any topics that they would like to be addressed at future meetings, with the next one hopefully to be arranged for early Summer.

Paul Morpeth, Secretary

March 2019