

**MINUTES OF APIL MEETING**  
**CHILD ABUSE/MULTI-PARTY ACTION MEETING**  
**ON 14 SEPTEMBER 2010 AT LEIGH DAY & COMPANY - LONDON**

**Attendees** : (See Attached CPD Register)

**Speaker** : Rosalind Coe, QC of 7 Bedford Row, London

**Apologies received from** : Billhar Singh Uppal

Rosalind Coe, QC who has extensive experience of child abuse and multi-party actions presented her talk on child abuse and litigation generally and in particular surrounding the Manchester cases.

Miss Coe queried why there were so many multi-party cases on the Group Litigation Order Register. She wondered how the Register was maintained and whether old cases were just not removed from the List.

**Issue of Claim Forms** - whether it's necessary to have individual claim forms issued and whether it was possible to have a Claimant to be deemed to be on the Register. The issue was challenged by the Defendants' in the Manchester Case. The decision was that cases must be issued but they can all be joined onto one Claim Form which is reviewed and amended every three months without leave but with the Defendants' consent in writing. The Manchester case has about 150 Claimants.

**Cut Off Dates** - This is a different area in child abuse cases as many Claimants are reluctant to come forward for obvious reasons. There is a case outside the Manchester Group issued cases of Taylor - v - Newgent Community Care. It was issued outside the Group. It was struck out but won on appeal. It wasn't allowed to join the group but is managed alongside the Group Litigation. In general it is best to have all cases under one umbrella litigation. A recent article has been written describing the US style of "opt out" of cases rather than "opt in" which is good for product liability cases and could be implemented in Child Abuse.

**Cost Capping**

There is a case of Barr v Biffa Waste II where costs cover under an After the Event Insurance was one million pounds and it was argued that the costs cap should be at this level. The costs cap was actually given of 1.5 million.

### **Disclosure**

Everyone dreads generic disclosure. In a recent case of Goodall which was related to opium dependent prisoners who were put under rapid detox. An application was made for paper and electronic disclosure. However, it was then limited to only four key witnesses and a very limited key word search to reduce the amount of documentation disclosed.

### **Value of Multi-Party Cases**

Under the funding code there is still a £5,000.00 limit but this is impractical in some cases where there are a large number of low value cases, child abuse cases can fall into this category. From her own experience of the Manchester Group Litigation, Rosalind explained that the Group Litigation Order had been opposed by the Judge himself. He was very reluctant to make an Order because he was concerned about costs apportionment between winners and losers and he wanted a proposal put forward to the Court in relation to cost sharing agreements plus Counsel's Opinion in that respect before he would grant the Group Litigation Order. Judges are now getting more involved in Orders being made in Group Litigation and seemed to concentrate their concerns on case management and representation such as Lead Solicitors and marshalling tools. The minimum number for Group Litigation is still 10 there is no upper limit.

### **Preliminary issues**

Nowadays there is a move away from having preliminary issues tried during child abuse cases because of the prospect of giving evidence twice. Vicarious liability also needs to be considered carefully, particularly in scenarios where e.g. gardeners are teaching children how to tend a garden with the knowledge of the staff. There is a judgement due soon in the St Williams' cases which should clear up the issue of vicarious liability.

**Mr Jonathan Wheeler** - then gave us an update on the activities of the Executive Committee – The Jackson review is not going to go away. We need to look out for him doing away with success fees

and a 10% increase in damages. It will obviously have an effect on multi-party action and child abuse cases.

There is also a study of Bereavement Awards which seems to be more generous in Scotland. If anybody has clients who can show that they are disadvantaged by this could they contact the APIL Office. There is a Personal Injury Protocol review by the CJC awaiting. Employers' liability and compulsory insurance.

There is also a proposal that the DWP have an employer liability tracing service. If anybody has any case studies of employer liability tracing problems, can they give them to the APIL Office. Also, if there is anybody having problems with the RTA portal to contact Abbey Jennings in the Apil Office and any case studies dealing with third party capture.

The Association of British Insurers' are trying to induce a voluntary code to control third party capture or as it is now being described as third party assistance. Any case studies to the Apil Office please.

Mr Stephen Walker of the NHLA is in dialog regarding proposals for a code for best practice. There is also a Meeting coming up in Edinburgh with the CICA to deal with problems of delay and direct payment to Claimants when Solicitors are acting. That Meeting is to take place on the 26 October and any cases studies that should be highlighted, please send to the Apil Office.