

APIL AREA MEETING – 22 FEBRUARY 2012

Having had difficulties arranging meetings in 2011 we managed our first Area Meeting of 2012. There was a fairly good attendance of 19 attendees and no doubt the presence of our President David Bott and Nigel Tomkins was a factor in getting people there.

David Bott's Talk

David had a great deal to talk about and his talk was very informative.

ABSs

David summarised the position following outcome focus regulation which came in with effect from 06 October 2011 and the fact that ABSs are now allowed.

David was speaking from his own experience because he is applying for his Firm to become an ABS.

He went through all of the difficulties in applying to become an ABS and the complexities of the Stage 2 Form.

He explained that he had thought that there might be a Fast Track open to Firms who had gone down the LDP route already but this is not the case.

There is no fixed charge but a minimum of £2,500.00.

Turn around time for Application is likely to be at least 6 months.

Apparently there are 111 Applications pending at the moment but none have gone through yet.

The advent of ABSs makes one query as to why one would bother to qualify as a Solicitor.

You can now have non-lawyers as Partners – not just Legal Executives.

However a lot of David's talk focused on the wider picture and the impact ABSs will have.

He looked at the example of say Slater and Gordon, the big Australian Firm who floated on the Australian Stock Market who are rumoured to be purchasing a large English PI Firm. The rumour is that they will be investing £30,000,000 worth of capital in that business.

Venture Capitalists are going to be looking for opportunities here.

His conclusion is that really size is going to matter in the future.

In order to survive you either need to have a large turnover, possibly £50,000,000 or just be a small boutique specialist type Firm who can offer a specific bespoke service.

The Portal

Nigel did a short session on this as well.

However David is concerned about the possibility of both horizontal and vertical extension of the portal. He is of course heavily involved in it.

The government need to learn lessons from last time round and really need to get the rules sorted.

He thinks that the government's target of 2013 is completely unrealistic, especially if we are talking about horizontal extension. Possibly, at a push they might be able to get RTAs up to a value of £25,000.00 in to the portal but nothing more.

It is likely to be a staggered approach.

Of course the other problem is the lack of Civil Servants to implement any proposed changes.

David also strongly advocates the "user pays" approach i.e. that if Claimants between them pay half of the management costs and then we get a say in how it is run. He says this will be a very small sacrifice in fees indeed.

Most of the floor agreed with him.

LASPO

Obviously this is the main concern of most Practitioners at the moment.

He said throughout that the Government is absolutely determined to push through the reform. The Ministers at the moment are simply not listening to us.

Most crucial sections are section 43 and 44 with regard to the avulsion of inter partes recoverability of additional liabilities and also the question of referral fees.

He discussed the question of the 10% increase in General Damages but queries how this is going to be enforced. The insurers argue that when looking at the level of General Damages, all settlements should be taken into account but that is completely unrealistic. APIL's firm view is that one should only look at judicial decisions.

Under the new rules there will be a 25% cap on Damages to be paid to the Solicitor by way of success fee so in other words a return to the position we had between 1995 and 2000. This excludes any future losses.

QOCS

There is obviously much debate about this and it needs to be thought about.

APIL's position is that we should be pushing for OCS so that Defendants will only be able to recover their costs from a Claimant in the event of fraud, proved to a Criminal standard at Trial.

There is just too much ambiguity at the moment.

Proportionality under the new rules will also be a great cause for concern because we might end up not being paid for work which is absolutely necessary for a Claimant but deemed disproportionate.

The Fixed Costs Regime will be much wider than before.

David also stated that he will be pushing on APIL's part to state that QOCS must reign supreme against Part 36 and, i.e. if there is a failure to beat a Part 36 Offer this will not result in adverse costs penalties. Otherwise there will still be a need for After The Event Insurance to cover this eventuality.

He also said that we will be pushing for recoverability to remain in place for Clinical Negligence and Industrial Disease Cases.

This was all set out in an e-mail that had been sent out to all members earlier in the week.

APIL have proposed a series of compromises to the Government.

Namely:-

- 0% Success fee in the case of an admission which is fully legally binding
- Fixed Success fees in all cases
- 50% Success fees in relation to cases that go to Trial

There must be different rules for Counsel because they face completely different risks to Solicitors.

There have been misleading reports in the Legal Press about a split within APIL which would appear to be unfounded. When asked for a show of hands, most members seemed to support APIL's compromise and there was a lively discussion. In particular Grant Evatt of Blake Laphorn was supportive of the proposed compromises.

Nobody voiced any opposition to them.

Subsequent to that it is believed that about 90% of members overall are supporting the compromises.

The organisation does represent some 6,000 members so one would expect there to be some dissent.

Transport Select Committee

David summarised some of the things that have been discussed.

- Whiplash Claims and increasing evidential burdens
- Suggestions that there are simply too many claims
- Insurance practices including third party capture

Lofstedt Report

There is no case to change Health & Safety legislation (and the government would not be able to anyway). It is more a question of interpretation of the same.

Portal Costs

There have been suggestions bandied about concerning changes in portal costs. It does seem certain that costs will go down but David said that reality is nobody really knows what they will go down to. Obviously Claimant Solicitors will be losing the 12.5% success fee they currently get but anyone who says that they know what they are going down to is purely speculating.

Nigel Tomkins

Nigel spoke about the proposed extension to the portal.

He said in theory horizontal extension might be attractive but:-

- It will only work in cases where there is a direct right against insurers (we have this in RTAs but of course we do not in EL/PL or indeed any other type of claim)
- We need a searchable database of insurers – again this does not exist in relation to EL and PL
- There needs to be compulsory insurance – this only exists in EL cases (other than RTAs)
- There must be a fund of last resort – again this only exists in relation to RTA cases where we have the MIB. We need an ELIB.
- Also it can only operate in cases where there is a full early admission of liability. The only exception in the RTA portal at the moment is arguments as regards contributory negligence for failure to wear a seat belt but there is no proper comparison in relation to other types of cases

Of course, if all of the above can be implanted then in theory there is no reason why EL and PL cases of a low value cannot be dealt with under the portal. There would be no more unusual issues with regard to quantum if that is all we are dealing with.

He reminded us of course that once a case goes out of the portal it cannot come back in.

Nigel thinks that the portal may be extended vertically but horizontal is just not realistic as things stand at the moment.

He reminded us that the House of Lords may well be looking at amendments to the LASPO bill so watch this space.

He also touched on the Lofstedt report reminding us that European Law requires domestic legislation to at least comply with European standards. Furthermore, where there is existing legislation which imposes a higher standard of duty than the European regulations, the domestic government cannot reduce standards to those of the European regulations.

In summary therefore any proposed changes to Health & Safety Law really are just a non starter.

Nigel also agreed with David's suggestion about "the user pays" proposal relating to the portal.

General Discussion At The End

As per usual we asked for views with regard to future meetings and venues.

Blake Laphorn have offered their premises in Chandlers Ford which are fairly nearby and generally it was felt that would be a good venue.

Gavin Lane asked if anyone can think of any speakers that they would like to get down. He is happy to receive e-mails.

Members of the EC and Judges always tend to draw the audiences in.

Most people would prefer to see meetings start a bit earlier.