

MEETING NOTES

DATE: 29 February 2012, 5pm – 7pm

SUBJECT: APIL East Anglian Regional Meeting

LOCATION: Holiday Inn, The Havens, 2 Ransome's Europark, Ipswich.

ATTENDEES: Sharon Allison, Richard Barr, Rachel Benford, Ian Bradford, Tom Cook, Mark Copley, Simon Davis, Anna Foster, Richard Foyster, Robert Gair, Mark Holt (Speaker), Roger Loomes, Siobhan McWhinney, Victoria Mortimer-Harvey (APIL EC Member/Speaker), Nick Peake, Richard Petrie (Speaker), Tom Ranson, David Richards, Hannah Rutterford (Regional Co-ordinator), Stevan Stratton, Mick Upton (Regional Secretary), Michael Wangerman, Benjamin Ward, Kerry Wigg, Geoff Young.

1. INTRODUCTION BY HANNAH RUTTERFORD (HR).

HR welcomed everyone to the meeting and introduced the speakers, Richard Petrie, Personal Injury Trust Development Consultant at Frenkel Topping, Mark Holt, Consultant at Frenkel Topping and Victoria Mortimer-Harvey who was attending to provide an APIL EC update.

2. "CALCULATING PENSION LOSS" BY MARK HOLT (MH).

MH spoke about pensions and the ever-increasing importance of considering loss of pension as a head of loss, particularly as changes are afoot to bring in compulsory pensions over the next few years. MH gave an overview of changing pension legislation and types of pension and he suggested that pension loss claims should be considered in every case where there is a future loss of earnings claim advanced. MH warned that failure to consider loss of pension could constitute professional negligence. He is able to produce pension loss feasibility reports where a solicitor needs a review to see whether a claim for loss of pension is viable, and in many cases he is willing to do this for free.

MH gave examples of pension loss calculations and illustrated how a loss of pension claim can add significant value to a claim. He stressed that loss of pension claims are not restricted to low value claims but can also apply to relatively low value claims. In his examples MH claimed a 5% return on investment through the pension. He was asked whether this investment rate succeeded given the poor performance of pensions over recent years. He said that this rate had been accepted and the judges in the relevant cases did not have a problem with the rate of return claimed as pensions are seen as long-term investments and over a long period, historically pensions have provided a rate of return of more than 5%.

MH warned people to be aware that certain clients may have more than one pension with the same provider. For example those who have pensions with CIS may have more than one pension in place because salesmen who used to sell pensions for CIS were commission-based and only received commission if they sold new pensions, not if they secured increased payments into existing pensions. As a result, some CIS pension holders have been known to have several pensions.

If you want an informal, free assessment as to whether there is a viable pension loss on one of your matters, contact MH can be contacted at Frenkel Topping on 0161 886 8000.

A hand-out of MH's talk can be request from APIL.

3. "THE BENEFITS SYSTEM. MAXIMISING YOUR CLIENT'S INCOME" BY RICHARD PETRIE (RP).

RP gave a useful overview of the benefits system and the radical changes and extensive cuts which are going to be implemented by the Government over the coming years in order to cut the cost of the benefits system. He outlined how some benefits are being phased out, how Claimant's are being migrated to different benefits and how Claimant's will be re-assessed

according to more stringent criteria and will be assessed more frequently. RP stressed that the new criteria being put in place by the Government is making it much harder for Claimants to qualify for benefits and many Claimant's are failing to surpass the threshold required to keep their benefits. More benefits are also becoming means-tested.

The overall plan of the Government is to replace all existing credits with a universal credit/benefit payment which will provide one payment to cover areas such as transport (currently covered by Disability Living Allowance), Care (currently covered by Care Allowance cover and Disability Living Allowance), rent and Council Tax.

In April 2012 the maximum benefits payable per household will be capped at £26,000. The Government estimates that the changes to the benefits system will save around £11bn.

RP advised solicitors to make sure that their clients receive proper advice on their benefits entitlement to make sure that their income is maximised. A handout of RP's talk is available from APIL.

4. EC UPDATE BY VICTORIA MORTIMER-HARVEY (VM).

The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Bill is now at the reporting stage. APIL have been lobbying regarding the non-recovery of ATE premiums and various other issues. The APIL EC have made it clear that they see a Claimant's damages as being sacrosanct and that the Claimant should receive 100% of damages. APIL will continue to lobby but they proposed a compromise that if a Claimant was able to recover the success fee on a staged basis, APIL would accept the non-recovery of ATE premiums. Standing firm has not worked so APIL decided they needed to compromise but unfortunately the compromise papers were leaked.

APIL proposes:

- Acceptance of non-recovery of ATE premiums.
- Acceptance of Staged success fees but that they be recoverable.
- Qualified one-way cost shifting (except where there is fraud).

The Law Society, MASS, SIA, Roadpeace and AVMA all agree with the proposed position. APIL's paper is gaining support so it may lead to some amendments.

The current LASPO proposals will lead to a Claimant paying the ATE premium and losing 25% of damages. APIL's view is that current proposals will lead to lots of claims not being taken on because firms cannot afford to take the financial hit.

VM was asked why the Government keep referring to a compensation culture when the last review carried out by the Labour Government suggested that there was only a perception of one. VM said that statistically, road traffic claims had gone up but there were various possible reasons for this such as third party capture, scam text messages, referral fees and even the RTA portal. VM said that every other type of claim has pretty much stayed at around the same level but stories about the compensation culture grabs headlines.

The proposal to increase general damages is being looked into by a group of judges.

Referral fees are felt to be out in the open now but APIL feel that referral fees need to be regulated. APIL feel that a complete ban on referral fees would lead to the practice going underground. APIL want to get a ban on mobile text messaging.

In relation to S.1 of the Damages Act 1996 VM explained that Claimants can ask for a rate of return different to 2.5% pending the review of the discount rate which should be carried out by the Lord Chancellor.

APIL are continuing to apply pressure on the Government for a fund of last resort in Employer's Liability claims, especially for mesothelioma claims.

The Multi-track Code pilot has concluded. There are 85 claims on the database, 5 of which have settled. A meeting will take place in October with those who were involved with the scheme, including the NHSLA, to obtain feedback.

HR advised attendees that the next regional meeting will take place at East Anglian Driveability in Thetford on a date to be confirmed.

MICK UPTON (Taylor Vinters, Cambridge)
Associate

26.04.12