

File note

Client: APIL South Regional Group Meeting Minutes

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26 September 2012

Meeting 26 September at Jury's Inn Southampton: Accommodation and Care Speakers

Location – Jurys Inn in Southampton

In Attendance – see attendance records attached.

- GL - Coordinator
- RVJ secretary
- Speakers
- Ms Jane Topliss - Architect - Accommodation Expert
- Ms Ann Harris- OT
- Mr John Spencer - APIL EC Officer

GL opened the meeting and introduced himself as new coordinator and RVJ as new secretary.

Then handed over to John Spencer for EC update.

EC Update

1. PORTAL EXTENSIONS

JS spoke about the extension of the portal to include all EL, PL and RTA accidents up to £25,000.

CPR sub-committee which is drafting documents to be put before the committee on 5 October.

Probable changes to RTA Protocol

- ability to obtain additional medical reports
- ability to make subsequent interim payment applications in cases between £10,000 and £25,000
- ability to adduce expert evidence from non medical disciplines
- ability to adduce witness statement evidence

- change in the timing of stage one payments delayed until stage two and payments to be combined

EL/PL Protocol

- all contributory negligence arguments outside the protocol
- whilst there is some ongoing discussion on the scope of what will be within the protocol and what will be outside, it is probable that the following categories will be excluded:

-PL disease cases

- where Claimant is deceased:

-in public liability cases where the Defendant is individual

-in cases where C is bankrupt

-in cases where D is insolvent

-Multi party disease claims

-cases of damage, harm, abuse and neglect to children

-clinical negligence claims

-mesothelioma claims

-RTA claims

2. PROTOCOL FIXED FEES

The Civil Justice Council have instructed Professor Paul Fenn in relation to fixed fees.

APIL are writing to the MoJ with regard to the Government's intentions in respect of next steps with regard to fixed fees, and Deborah Evans will be writing to all members who are encouraged to respond.

3. WHIPLASH & SMALL CLAIMS COURT LIMIT TO £5,000 IN PI CASES CONSULTATION

This consultation is due to be published imminently.

APIL need case studies which demonstrate that insurers routinely try to under-compensate and have been doing so, cynically, since the guidance was published. Ideally we need the following elements in each case:

- The insurer made an initial offer after June 2010
- The claimant wasn't satisfied and came to you

- The final settlement was considerably more than the original offer (if there isn't yet a final settlement, but good evidence that the case is worth more than the insurer originally offered, that would be good enough)
- A client who is prepared to be named and to have his or her story told to the press or to parliamentarians

In fact, they need **ANY** evidence of sharp practice or injured people with cases worth £5,000 or less being badly treated.

4. SIMMONS & CASTLE

The ABI have intervened after criticising the Court's announcement that damages will be increased by 10% of all judgments delivered after 1st April. APIL will also be heard at the reopened hearing. (The reopened hearing has now taken place and judgment was delivered on 10th October 2012. The judgment holds that there will be excluded from the 10% increase in damages those claimants who fall within the ambit of Section 44(6) of LASPO Act. (i.e. those who sign a CFA before LASPO comes into force before April 2013). All other claimants whose judgments fall after implementation of LASPO will benefit from the 10% increase.

5. DISCOUNT RATE

The MoJ is consulting on the methodology of calculating the discount rate and APIL is responding. The MoJ will consult again in the Autumn on the legal basis for setting the rate in England & Wales.

6. EMPLOYERS LIABILITY COMPULSORY INSURANCE CAMPAIGN

Mesothelioma victims who are unable to trace former employers' insurers will seek compensation, but the scheme requires primary legislation, which could take two years, which is a tragedy for mesothelioma sufferers. APIL is campaigning for parliamentary time to be made available. The scheme compensates those diagnosed from 25th July and offers some, rather than full, compensation.

7. CRIMINAL INJURIES COMPENSATION SCHEME

Helen Grant MP, replacing Jonathan Dyangoly as the relevant MoJ Minister, stated at the 11th hour that it made "excellent sense for the Government to look carefully at the scheme and consider certain reforms". APIL played a significant role in causing this rethink and continues to lobby for a fair scheme.

Talk from Bush and Co on Occupational Therapy and accommodation

Talk given by Anne and Jane.

OT

Ann opened by speaking about her role as an occupational therapist.

What we do

Assess impairments and how it impacts on daily life.

- look at solutions and costs solutions to them,
- look at how equipment can reduce the disability

- better both travel and accommodation
- increased holiday costs and increase household expenses

Initially we will do a functional review, for example, have they got the power and strength in their limbs to undertake tasks or look at function - will then undertake an informal assessment to compare against the form and function one looking at specific tasks, will then undertake physical and cognitive assessment.

Valuing care

- start to look at a normal day
- start to look at what, in the cases of children, what normal parental care would be. No guidelines exist but they have prepared some that they evaluate against
- start to be looking at physical care as against emotional care

Costing

- use of the daily rate rather than the aggregate rate. Would look to use this when there is no night time care

Future

- will look at family dynamics, care in and out of the home
- level of skill that is required
- when putting a care team in place it is her experience that those with the correct requisite skill will stay longer in the role. The client will get more out of it. She gave the example of a standing frame. Anyone can put an individual in a standing frame but it's engaging with the client whilst they are within it to make sure that they get the maximum therapeutical benefit

Looking a risk assessing tasks or carers as employees.

Looking at whether care is going to be provided by family or agency - looking at live in carers and assessing against the working time directive.

Setting again the importance of good staff and the benefits for the client.

Ancillary costs

Ancillary costs for staff which are:

- CRB checks
- training
- pension
- food expenses and insurance

This goes to the calibre of the employee especially in relation to pension issues. If we want to attract people from the employment sector we need to be looking at offering them an attractive employment package.

Equipment

There can be interplay between herself and the accommodation expert for example, if they had the correct bathroom/kitchen would the client still require assistance.

- start to look at functionality -v- capacity. Experts often look at capacity to undertake things but as a care expert she looks at functions. For example they may be able to do a task but do they have to have this translated into day to day living. For example if you are dependent on crutches how do you carry items, it may be that wheelchair will assist.
- looking at aesthetics of equipment, especially in the young. It may make a difference how the equipment looks and whether the user is disabled. This can make a difference in product typing and costing
- looking at what is important to the individual in relation to equipment, for example it may be something simple as providing a holding baby sling to somebody who has had a stroke and has an arm injured to enable them to hold grandchildren in the future, modified writing pen etc.

Transport

- explain the interplay between motor vehicles and wheelchairs. For example the NHS wheelchairs or manual chairs. These are easy to get in and out of most vehicles. If however you have a privately purchased wheelchair which has a padded cushion then these can mean that the client sits higher in the chair and can find it difficult to get in the back of a vehicle. Need to assess the interplay between any wheelchair and vehicle provided.
- mobility expert to work with the OT

Questions asked in relation to an issue about keeping a care diary. When instructed she said that this would be helpful or a full witness statement to get the family thinking about what they really do.

In relation to manual assessments she has asked whether she would undertake this herself. She confirmed not but this will be done separately from somebody who has the requisite qualifications and incorporated into a report.

Tips for practitioners when instructing OT's are to ensure that confirm whether they want to simply deal with care or care and equipment. Practicalities, for example, clients address and telephone number are correct.

If can, get a chronology of medical history confirmed between the parties.

Provide a full copy of all medical reports, DLA application and school records.

Jane Topliss - Accommodation

She explained that she gets involved either when there needs to be emergency adaptations to a house or a couple of years down the line where family are looking for a new property.

Her approach to assessment is threefold.

1. She will review all expert reports - this is medical and other disciplines;

2. She will meet the family; and

3. She will make an assessment of the current home and following that prepare a report.

The report that is prepared is a Schedule of Accommodation. This could then be given to an architect who builds any new home.

She explained the importance of an OT report to her. This gives her information on stage transfers, mobility needs, needs for a specialist bathroom or kitchen, specialist equipment and most importantly the amount of storage that will be required in a property.

For example, if there are specialist needs e.g. physiotherapy in the home, can consider provision of a gym.

Will also work with assisted technology experts for example if they have recommended door openers are environmental control.

She explained the importance of meeting the family. The need for understanding first hand the barriers that they have home and whether these relate to dexterity or mental capacity. She will also look at the current home and the need for parking which can become an issue if family have many cars and also space needed for carers cars.

Will look to the future to see what their intentions would have been for properties but for the accident. She said that the importance of location cannot be underestimated. It needs to fit in with their social situation. She stressed the fact that a bungalow is not always appropriate. Sometimes for some individuals they need a property which is in town to fit in with their social situation and she gave the example read from a wheelchair report highlighting the fact that location is key.

The assessment of the home, she will take photographs and draw up plans and take details from the individuals relating to the running costs of the home.

The meeting then concluded at 19:30.