

APIL NORTH EAST REGIONAL GROUP MEETING

MEETING NOTES

DATE: 17TH OCTOBER 2012

Speakers: "Calculating loss of earnings to the self-employed in personal injury actions" – Simon Philpott, Forensic Services, Smith & Williamson; EC Update – Nigel Tomkins.

Location: St James's Park

Attendees: See attendance list

MINUTES

1. Joanne Willits asked members to raise any issues or topics they would like addressed at future meetings. Members to speak to JW or KJA (secretary) regarding this.
2. Mr. Simon Philpott from Smith & Williamson spoke about calculating loss of earnings to the self-employed in personal injury actions. He asked members to attempt to calculate the loss of earnings for a self-employed claimant using the facts and data provided (see attached sheets). Mr. Philpott then went through the example accounts provided and detailed the points that members should be aware of when dealing with a self-employed claimant. Detailed notes provided by Mr. Philpott are attached.
3. EC Update – Nigel Tomkins
 - ❖ Extension to portal – The government has been working to draft and extend the portal to include EL and PL claims. APIL have said the government cannot extend the portal beyond RTA cases without a proper assessment and review. The average settlement in RTA cases has dropped in portal claims, and a huge amount of cases drop out of the portal. APIL has instructed solicitors to write to the MOJ and a response has been received that they cannot respond until mid October 2012. There is likely to be rapid developments at the end of October 2012 by APIL regarding this issue.
 - ❖ Fees in portal cases – the government still intend to change the fees in April 2013 but there has been no consultation and there are no meetings in the pipeline. The government has to consult and it is starting to get too late for the changes to happen in April 2013, however, APIL is considering whether to write to the MOJ to ask what the intentions are. If the government agrees to a consultation, we need aims and objectives and details of what we can live with fee-wise and APIL needs member's input regarding this. Fees should be increased, but the government seem determined to reduce them, despite the fact they were originally set after negotiation.

- ❖ Small claims limit – the government have been promising a consultation document since August 2012, the MOJ have informed APIL that it will be in “a few weeks”. The government are looking to save money on whiplash claims as they think there is an epidemic. Insurers say they are fraudulent claims and there is a need to restrict damages and come up with a medical test to prove whiplash, and that access to justice does not mean access to a lawyer. APIL say that whiplash claims are going down and research shows that the insurers’ claims are incorrect – this research will be published soon. APIL’s case is that the government does not have to stop genuine claims to stop fraud. APIL have put together a 10 point plan which is available on the APIL website in the campaigning section. APIL needs constant information from members including details of pre-medical offers, and where members have settled a case for more than was offered directly to the claimant by the insurer before the member was instructed.
 - ❖ Increase in general damages – Simmons .v. Castle – the Court of Appeal stated that there would be an increase in general damages of 10% where judgment is given after 1st April 2013. The ABI appealed and argued double recovery. APIL became an interested party and made representations to the CA. The CA has now said that if you sign a CFA before 31.03.13 the claimant will not get the 10% uplift; in all other case the claimant will get the 10% uplift. There is still some confusion regarding how part 36 offers are going to work.
 - ❖ Discount rate – the closing date for the consultation period is 23.10.12. The discount rate is still 2.5% and there is a concern that in cases with a future care claim, the claimant will run out of money unless periodical payments are in place. The government are working to change the whole calculation, not just the percentage rate, and it is suspected that there will be a second consultation before anything changes.
 - ❖ EL compulsory insurance – there will be a fund of last resort for mesothelioma cases. Further details awaited.
 - ❖ CICA – the government dropped the changes at the last minute and the current scheme continues. It is unknown if the government is going to consult or review the scheme again but at the current time it is not on the agenda.
4. The Enterprise and Regulatory Reform Bill – it was briefly discussed how the government has passed the aforementioned bill which amends section 47 of the Health and Safety at Work Act 1974 regarding civil liability. The Bill has reversed the wording of section 47, basically meaning that you cannot rely on health and safety regulations, unless they expressly state that you can, instead of the current position which states that you can rely on them, unless they expressly state that you cannot. There has been no consultation regarding this. The end result would be that the Claimant would be in the same position as they would have been 100+ years ago. We couldn’t go back to the Factories Act as it was repealed. The government can make this

amendment as EU directives require us not to reduce standards and if criminal standards are maintained then there is no reduction, even if you cannot use the regulations in civil claims. These changes will make EL cases very difficult, and strict liability cases will lose. We would go back to arguing common negligence only.

Kirsty Allen, Secretary

17.10.12