**MINUTES OF APIL MULTI-PARTY**

**ACTION/CLINICAL NEGLIGNCE SIG MEETING**

**25 February 2014**

**At Leigh Day and Co, London**

**Speaker:**

**Mr Ian Cohen – Practice Group Leader, Clinical Negligence, Slater &**

**Gordon Lawyers**

The title of his talk was “The George Rowland Litigation – a blue print for Group Actions against the NHS”. The case involved a group of Women who had been operate on by Mr George Rowlands, Consultant Urogynaecologist between 1994 and 2008 at the Aintree Hospital and the Liverpool Women’s Hospital

This blue print worked very well pre Jackson but there may be some difficulty in using it post Jackson. Perhaps it can be used in spirit as financial incentives for the NHS LA have been removed.

The Protocol is currently being used in a number of similar Group Actions around the Country but it has been significantly modified. It also probably wouldn’t work for claims against MPS, MDU or Insurance Defendants but it does illustrate that a case can be dealt with successfully without Court involvement.

It was estimated that Mr Rowlands had operated on about 3,000 women for various gynaecological conditions. He had performed a bundling of procedures during the same operation and this had led to many of them suffering from incontinence.

At the outset of the claim there had been 2 connected cases which developed into 350 cases after an advertising campaign. There were six other firms involved acting for about another fifty Claimants. A report was produced by the Health Board called “The Verity Report” which showed that there had been KPI’s in place but analysis had been done to pick up the statistics of poor outcome. Dr Rowlands was an old fashioned style Consultant and no-one had questioned him.

The Protocol only took two months to actually set up. A pro forma of the agreement was quickly set up and agreed with Hill Dickinson, the Health Authority Solicitors. The Claimants would give a brief summary to Hill Dickinson and they would be placed on a register of claimants. There were no Limitation issues raised at all. The cut off date was given as November 2010 but cases that came forward after the cut off date were allowed in without question.

There was a tariff for the various injury types and severities. The JSB was very unhelpful for gynaecological injuries so a CICA type scheme was set up plus bolt on figures depending on the number of operations each Claimant had etc and a discount given for any causation problems and there were some agreed specials. Interest was being claimed from the May 2010.

There was no litigation so there was no Group Litigation Order. There was a one way costs shifting regardless of the outcome on the cases because the costs were being paid on an indemnity basis on all cases i.e. the successful and the unsuccessful cases, so there was therefore a Nil percent success fee and also no need for ATE Insurance.

There was an agreed hourly rate which was in fact a 20% uplift on their normal hourly rate and then there was payment of generic costs as well. Interim payments on costs were made on a six monthly basis. It was for 75% of the costs claimed and at the end of the case the only costs negotiations was in relation to the residual 25% that had not been paid as an interim payment. There was a history of trust and confidence built up between the Claimant and Defendant’s Solicitors and overall there was an 85% recovery on all costs which all parties were satisfied with.

In addition to the interim payment on costs all disbursements have been paid every six months. Although the experts are joint experts they are in fact being paid entirely by the Defendant’s Solicitors.

There was a simplified claims process in that the claimant prepared a conditional & prognosis statement. There was a joint Letter of Instruction to the causation experts. Reports would be received and questions could be put to the expert. A further advantage was that the Defendants sorted and paginated the medical records and then sent them to the Claimants who prepared a Chronology. The Defendant’s then did all the photocopying. The aim was to get the Schedule of Loss ready one month after the report for negotiation.

In the majority of cases breach of duty would be admitted but there were a handful that needed breach of duty reports. Overall there was one third of the Claimants that had negative cases.

Disclosure of medical records was a nightmare because Dr Rowlands practiced in two hospitals Aintree and Liverpool Womens and notes would get mixed up between the two hospitals so it was difficult to establish whether a complete set had been disclosed.

Several support groups were set up. The Claimant’s themselves were Co-ordinators. There was an exchange of information and the NHSLA paid for the expenses of the support groups. Many experts came to give them talks. There were also commercial organisations e.g. Tena Lady and nursing experts

As far as the time frame is concerned in February 2014 there are still 250 cases that have not yet been resolved so in fact only half the cases have been resolved since 2010. It is taking a lot longer than anticipated. Obviously there are benefits to the Claimants for this type of settlement. There’s no adversarial process and they don’t have to multiple expert examinations. There are interim payments of damages for the clients and the support network.

As for Dr Rowlands there has been a GMC investigation and restrictions have been put on his registration but apparently he is still working although it’s uncertain as to his whereabouts.