APIL NORTH EAST REGIONAL GROUP MEETING

MEETING NOTES

DATE 26TH MARCH 2014

Speakers: Deborah Evans, APIL Chief Executive; "Jackson – 12 months on, A View from the Trenches", Ian Cosgove, Costs Lawyer.

Location: St James's Park

Attendees: See separate attendance list

MINUTES

1. Introduction – Joanne Willits

2. Deborah Evans provided an overview of the topics discussed at the Civil Justice Council Meeting last week, and provided an update generally on APIL's current activities.

    - There are no signs of things abating. The changes of the last year are still settling in. Qualified One Way Cost Shifting has not yet been tested as Part 36 is getting in the way.

    - There is an access to justice issue developing. The reality is that there is the same number of enquiries but less cases as fewer are financially viable. Low value claims are being turned away. But the low value claim is actually high value to "Joe Bloggs" on the street. It seems unfair that the changes mean people cannot claim.

    - The reforms so far really need 2-3 years to settle in so we can see the full impact, especially changes to the running of high value claims.

    - There is an issue in more complex cases with a 25% success fee cap. Cases which have been risk assessed as having a 51%-60% chance of success are deemed as being too risky to run. The majority of firms are risk averse. This means there is a sizeable group of injured people who cannot get representation.

    - DBA's- there is still a swell of support to get rid of the indemnity principle. DBA's are useful in commercial law. It is being looked at as to how they can work in PI. The idea was to give the lawyer a bigger share of the damages where the prospects of success are lower but it is not a balanced risk yet.

    - There are some transitional problems with CFA's and a barristers success fee where the barrister came on board after 1st April 2013, but the CFA between client and solicitor was signed before that date. Multi-party actions with different CFA dates for each party are also causing issues where some signed pre-April and some after.

    - Mergers and take overs are causing problems with CFA's in that they are not in the best interests of clients where the client is required to sign a new CFA following the merger or take over, as they lose 25% of their damages in success fees.

- Relief from sanctions and costs budgeting – it was never envisaged that every budget would be a fight. The system was built on the assumption that budgets would be agreed and in reality, they are being fought over and there are not enough resources to deal with this. Cases can be delayed by 6-7 months while the budget is being disputed. There is also an inconsistency between Courts and areas. There is also the feeling that it is not helpful to do a budget so early on in a case. It is a "finger in the air" approach. There is also no clarity as to what happens if you are over budget in one area, but still within the total budget for the whole case.

- Sanctions are creating a climate of fear to litigate. There is no predictability as to sanctions. Cases are getting thrown out over technicalities and this is causing bad behaviour. Solicitors are obliged to fight everything in the best interests of the client. The government is now looking at tweaks to try and get things working.

- Damages – APIL has seen a 20-30% reduction in net damages to clients. The 10% increase in general damages is hit and miss. The insurers say there has been an 18% increase in gross damages.

- Mesothelioma cases will be included in LASPO from April, to get increased compensation.

- The ABI are calling for a government debate to see if low value injuries should be compensated at all.

- The government's next push might be clinical negligence. There is a lot in the press about the cost of claims but also about hospitals consistently getting it wrong. There has been cover up after cover up. There has been whistleblowing to lawyers in NI.

- There are big discussions going on regarding whiplash reforms and accredited doctors to try and combat fraud. This is for the right reason but will serve other agendas – to reduce the cost of reporting and to try and get rid of pre-med offers. The process of diagnosis and prognosis is being looked at by a medical committee and a legal committee is looking at rule changes to ban pre-med offers. This is easier in low value claims than high value. They are also looking at rules for only using accredited doctors, and a fixed fee in the rules. They want it all agreed by July 2014. There will inevitably be a smaller list of doctors to choose from and you may get a different report to what you are used to. They are also looking at disclosing the different versions of events as well as the client's and there will be questions as to what these versions mean to the client's injuries.

- Guideline hourly rates- an announcement is expected imminently. They are arguing no separate rate and the outcome is awaited with trepidation.

- Judicial review with HMRC – this is important regarding mesothelioma sufferers. It is no longer possible to get work histories for bereaved people without issuing. This is expensive and causes delay. APIL is intervening in the ongoing case of Yates and is pushing to get the policy returned to what it used to be.

- Medical Intervention Bill – Lord Saatchi lost his wife to cancer and he feels the treatment has not moved forward in the last 40 years as doctors are scared to innovate in case they are sued. However, Lord Saatchi doesn't want to encourage

reckless experimentation. Innovation is dangerous when dealing with desperate dying people who are very vulnerable. We do have research with very tight guidelines. Lord Saatchi says they are too tight. We say they are necessary. We have the Bolam test. APIL thinks doctors will support them and say it is too dangerous. There will be pressure from drug companies and we will lose the opportunity to gather data. APIL fears a potential disaster. However, Lord Saatchi is very good at PR spin advertising. He brought a selection of dying people to a meeting who all said they wanted medical innovation. Lord Saatchi will play it all through the press and there have been You Tube videos already.

- Rehabilitation – the best practice guide is being looked again. The environment is not as conducive as before. A survey is being conducted to see how often it is used and provided.

- The multitrack code is being looked at.

- The law surrounding psychiatric harm is being looked at. It is the 25th anniversary of the Hillsborough disaster. APIL is trying to get the law modernised. At the moment it is very tight as to who has a close tie of love and affection. It should include grandparents, live in partners etc. There is a question as to whether the event needs to be shocking as opposed to distressing, e.g. watching a child die slowly would be classed as shocking. There would be a query as to proximity when dealing with how the event was witnessed, e.g. via skype. APIL thinks secondary victims should be compensated. An early day motion is being raised in Westminster this week.

- Pressure ulcers – there has been an issue raised regarding hotspots in the country where pressure ulcer numbers are worst. APIL has simple ideas as to how to prevent them and pilot projects are being rolled out, including a tissue viability nurse in each area.

- Air ambulance – it is believed the air ambulance should be able to recover the costs involved when they rescue someone but this is not as straightforward as it seems as the air ambulance is run by a different charity in every region. The law is being explored to see if the costs are recoverable. Any pilots will be trialled in Scotland and Wales where the air ambulance is partially funded by the NHS.

- SRA – there is a consultation as to whether solicitors need to do any CPD every year. The SRA are focused on "outcomes" and it may focus on a "good outcome" and remove CPD hours. There are concerns that people just go on any course to gain points rather than go on courses related to their area of law. However, there is a fear that if a required number of CPD hours are abolished, firms won't allow staff to attend training courses in order to save money. APIL is putting in a response.

- Enterprise Act – came in October 2013. Removed strict liability. May result in less cases. APIL are considering whether to write to the European Commission if the amount of civil remedies fall but it is still early days. Health and safety prosecutions are low anyway.

- FOIL – there is going to be a meeting of insurance lawyers with APIL to see if they can do anything together to help the current situation.

3. Following a question from a member it was discussed how Judges are reluctant to agree a compensation figure at an infant settlement hearing where a success fee has been deducted.

4. Ian Cosgrove, costs lawyer, spoke about "Jackson – 12 months on". He discussed three areas that have been a product of Jackson- budgeting, provisional assessment and the new approach to relief from sanction. Please see separate notes provided by Mr. Cosgrove.

5. Following a question from a member, it was discussed when the correct date for filing Precedent H is. The default position is 7 days prior to a CMC but the Directions Questionnaire requires Precedent H to be attached.

6. Thanks were given to the speakers.

7. Meeting closed.

Kirsty Allen, Secretary