APIL NORTH EAST REGIONAL GROUP MEETING

MEETING NOTES

DATE: 1st April 2015

Speakers: "Spine degeneration and low back injury", Mr Atar Kasis, Consultant Orthopaedic Surgeon; "Back Pain – What do we know and how can we help?", Nick Livadas, Clinical Specialist in Physiotherapy, Connect Physiotherapy; EC update, John McQuater.

Location: St James's Park

Attendees: See attendance list

MINUTES

1. Mr. Kasis gave a talk regarding spine degeneration and low back injury. A copy of the slides of his presentation are attached but additional points to note were as follows:

    - 60-80% of the population will at some point experience low back pain. Half will seek medical advice.
    - Acute attacks settle rapidly
    - 15-30% experience symptoms daily
    - The strongest factor of further episodes is history
    - 6% will be chronic – that is a high number
    - To injure the thoracic spine, a significant amount of force is required
    - Other factors to be considered when looking at degeneration include depression and compensation. In 90-95% of cases when people experience back pain it should correlate with the MRI scan, but if in the 5-10%, it will be other factors, and it would be a matter for the pain clinic. Surgery would not cure the pain.
    - Self funded private patients those who are self employed, do better surgically. They are better motivated to recover.
    - Following his talk there was a discussion regarding acceleration cases. Mr Kasis was asked where a client has been asymptomatic prior to an accident, then suffers trauma as a result of the accident, but the scans show degeneration, how does he arrive at a figure of acceleration (in terms of years). Mr Kasis commented that 60% of back pain is attributed to genetics. There are no MRI scans from the night before the accident, so it is difficult to be precise about the cause of back, but degeneration takes time. If the MRI scan was carried out 4 weeks after the accident, the disc won't have changed, but if it was 4 months later, it could have degenerated. If the scan was say, 2 years later, that

is long enough for degeneration to progress. In order to arrive at a figure for acceleration, it is necessary to look at the nature of the degeneration e.g. is the disc flattened or bulging? Mr Kasis also commented on the importance of making sure the radiologist is specialised, rather than general.

- Mr Kasis was asked whether he looks at other discs in the spine or just the one that was injured and he responded if there was force involved, it is concentrated on the one part of the spine, unless the force was very significant.
- Mr Kasis was asked if a greater trauma would result in a longer acceleration period and he replied that is not necessarily the case, as 60% is due to genetics. It could have simply been the straw that broke the camel's back. Plus, patients react to pain differently.
- Mr Kasis was asked whether a minimum amount of force is required and he replied that it all depends on how much degeneration was there in the first place. So if very low velocity, in general it would be unlikely to cause significant disc failure, and more likely a soft tissue injury, so it would depend on what position the client was in at the time and other factors.

2. Mr. Nick Livadas gave a talk regarding physiotherapy and how it can help those with back pain. A copy of the slides from his presentation are attached but additional points were as follows:

    - Mechanical = muscular
    - Physios would rather see people in the acute phase, to try and prevent them from getting to the chronic phase
    - 90% of cases are mechanical (non-specific) back pain
    - 5-10% are neuro (sciatica)
    - 1-2% are serious or systematic, fractures etc
    - 40% of people under 30 have disc degeneration
    - In the over 50-55 age bracket the percentage is 90%
    - The focus needs to be on getting people back to work asap – the longer the absence the less likely they are to return to work. There is only a 50% chance they will go back to work successfully if off for longer than 6 months
    - Following his talk there was a discussion regarding the benefit of sending clients to physio if they haven't been seen in the early stages. Nick replied that it would be difficult to change the pain, but they can try and change the functioning and increase that. The pain can decrease as a result of increased function. Mr Kasis commented that it is better for someone to have physio even 2-3 years later than not at all, and he wouldn't operate unless someone had received physio
    - Both speakers were asked about the effects of long term bad posture. Mr Kasis replied that there is no concrete evidence to say long term posture is going to cause disc degeneration but we know abnormal loading may predispose it. Mr Livadas replied that sometimes it is worth changing your posture, sometimes not. It depends entirely on the patient.

- Mr Kasis was asked whether an Orthopaedic Surgeon is the best person to approach in back injury claims and he responded that there is no 100% exact diagnoses for back pain. They look at imaging and you could do a discogram, which help, but you only get a firm diagnosis if you operate and the patient gets better.

3. EC Update – John McQuater .
    - Court fees – everyone is concerned about the increase and the lack of joined up thinking. Everyone, including APIL, MASS and TOIL are seeking to challenge the increase. The Insurers aren't saying much. They may start requesting limitation amnesty's, but are less likely to be friendly about that later. Members should keep APIL updated with issues.
    - Medical reporting for whiplash cases – medCo has been set up and you can register, but as a member raised, there is a problem with the registration as it asks you to accept a policy that hasn't been published yet. The main thrust is the random selection of experts which is a worrying trend. In practice, we don't know how it is going to work. Either you will instruct the expert directly, or you pick an agency who will select the expert for you, but it is unclear if you can select the particular expert. It comes in on 06.04.15.
    - Mesothelioma payment scheme - APIL has best practice guide. The government has upped the figures to 100% of compensation.
    - Coventry .v. Lawrence – the Courts have realised there is going to be a problem either way. If there is a breach of article 6, it will be opening the government to a Francovich claim. We could have proportionality applied to success fees in same way as base costs, depending on what happens. There is a major problem no matter what happens. There is no anticipated problem with cases still going forward. If there are prescribed success fees, then JM doesn't think they could apply proportionality, but it would be an issue if the success fee wasn't fixed.
    - HMRC – there have been problems where the client has died, but there is primary legislation going through to deal with it, but a deal has been agreed for an application to be made to allow court proceedings. Members should contact APIL for further information.
    - Mediation – APIL is working with others to get others to agree to mediation. There is going to be a website to members should look out for that.
    - Rehabilitation – APIL is working on updating the guide to rehabilitation – out later in the year.
    - Criminal Justice and Courts Bill – fundamental dishonesty - APIL put up a fight and had some support from the House of Lords, but it is now in the bill and comes into force soon. Claims can be struck out if the claim is fundamentally dishonest. This is likely to lead to satellite litigation. There is no corresponding provision for defendants. There are issues which will need to be determined such as what is fundamental dishonesty, what do you need to prove (civil or criminal burden), along with more practical points.

Members should be careful with schedules in bigger cases. Members should press the defendants for counter schedules as you will force them to admit or they wont admit anything, which is fundamental dishonesty on their part isn't it?! Members should adopt a zero tolerance policy on insinuations and seek indemnity costs. It is a professional standards issue. The Defendants not disclosing documents is a fundamental dishonesty issue. Members should not assume that Judges understand fundamental dishonesty.

- Medical Innovation – Saatchi Bill – this has gone. APIL had a part in that.
- Social and Heroism Bill – it will go through. It shades the Compensation Act. A Judge would always have taken it into account. In practice, it won't change much.
- Multitrack – APIL is working on a multitrack code again, there is no agreement yet, but hopefully it will be out later this year.
- Scotland – they are following what is happening in England and had their own Jackson review. They now have something similar to QOCS, but better. No fundamental dishonesty yet.
- NI – they are trying to increase the level for bereavement damages, which has fallen behind the rest of the UK.
- Discount rate – no news yet.
- No one has heard anything about defendant costs – we were promised this when fixed costs came in. Members should keep anything that will help and send to APIL or JM. Members should ask the defendants if the full rate or discounted rate has been used in their Precedent H's.
- Some Defendants are still sending Notices of Funding where pre-existing CFAs – this is contrary to the Jackson reforms.

4. Next meeting 30th September 2015.

Kirsty Allen, Secretary

17.04.15