

# MINUTES

## DAMAGES SPECIAL INTEREST GROUP

**Date:** 10 February 2016

**Start:** 5:45pm

**Location:** London

**Attendees:**

- Malcom Underhill – Group Co-Ordinator
- Ben Posford – Group Secretary / Minutes
- Dr Victoria Wass – Speaker 1
- Grant Evatt, APIL EC Member – Speaker 2
- Plus 44 others*

### **1. Introduction**

The Group Co-Ordinator opened the meeting by thanking everyone for attending and introduced the speakers.

### **2. Speaker One**

Dr Victoria Wass spoke for an hour - a fascinating presentation about applying and adjusting the Ogden Reduction Factors (Tables A-D), and why the Billett v MOD approach adopted by Jackson LJ was wrong.

The Reduction Factors and the calculations behind them are getting quite old now, but there is no prospect of an Ogden 8 on the horizon, because the MOJ won't pay the government actuaries to attend the committee meetings, and accordingly the Ogden Committee has not met since late 2010.

The data behind the Reduction Factors originates from the Labour Force Survey data, which unfortunately does not ask respondents to rate the severity of their disability, and

more importantly does not apply the same criteria to the definition of “disability” as section 6(1) of the Equality Act 2010:

**“A person (P) has a disability if—**

**(a) P has a physical or mental impairment, and**

**(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities**

The Billett judgment fails to recognise the extent to which someone with a disability is actually hindered in their ability to find work if their current job comes to an end. The statistics have remained stubbornly the same for the last 20 years or so:

By way of example, the Male Working Age Population [MWAP] (with no disabilities / impairments) has an employability rate of 85.7%, whereas the MWAP who have long-standing illnesses and some limitation to their ADL (approx. 12% of the MWAP) have an employability rate of only 34.9%. It is because such indisputable statistics show such a divergence that the application of the Ogden Reduction Factors leads to higher compensation awards than the alternative application of the *Smith v Manchester* approach now advocated by Jackson LJ in Billett.

Dr Wass illustrated her point by considering the situation for someone with a mild brain injury. Two generations ago, they could get a job on a farm or maybe on a factory floor (Henry Ford always used to say that he was happy to employ such individuals), but with the destruction of the UK manufacturing industry and the advent of intensive mechanised farming, the sort of low paid jobs available nowadays (Eg in a Call Centre) are harder to perform for someone with even mild cognitive difficulties.

A Q&A session afterwards was lively, with queries from Counsel for Billett and Counsel in Conner v Bradman, on which Dr Wass wrote a paper criticising the approach of the trial judge in adopting a Reduction Factor halving the difference between the table figure and the figure for an able bodied individual.

See the notes which accompanied the talk for further details.

Dr Wass is available as an expert witness, and can be contacted on [Wass@cardiff.ac.uk](mailto:Wass@cardiff.ac.uk)

### **3. Speaker Two - Update on Current EC activities within APIL**

Grant Evatt provided an update on current EC activities within APIL. In particular, he highlighted concerns about the pre-consultation on fixed costs for Clinical Negligence matters, and the use of data on costs by the NHSLA which for the Claimant side appeared to include not just solicitors profit costs, but also success fees (ie pre-LASPO), VAT, disbursements, etc, but for the Defendant side failed to include the cost of in-house lawyers and the NHSLA. Case studies, especially details from NHS Costs Budgets, are crucially needed by the APIL office.

APIL is working in conjunction with MASS and the Law Society in a joint effort to challenge the plans to move the Small Claims Limit to £5,000 for RTAs and – possibly – for all PI claims. A lot of detail about the proposals originally included in the Chancellor's Autumn Statement are yet to be released by the MOJ (probably because they do not know the answers yet – plans do not appear to have been fully thought through or costed at this stage).

Jackson LJ has been at it again – sticking his nose into the funding of civil litigation by proposing blanket fixed fees for cases where damages are as high as £250,000. These proposals are likely to be adopted in one form or another as soon as possible given the current attitude of the government unless unified, cogent evidence can be produced to show the detrimental effect these proposals are likely to have on access to justice issues.

All members are encouraged to write to their constituent MP – contact the APIL office is a precedent letter would be helpful.

All women in the room (just over half of attendees) were encouraged to apply to be an EC Member. There is presently only one woman on the EC.

**Close:** Approx 7:30pm, after which there was a lively discussion in the Resting Hare.