



GROUPS

**Minutes of Spinal Injuries Special Interest Group
28 November 2016**

Kingsley Napley Solicitors, Knights Quarter, 14 St John's Lane, London EC1M 4AJ

Protecting the Damages Award

- **The Effect of Divorce on Personal Injury Damages**
- **Use of Interim Payments for Property Needs**

Chair	Richard Lodge Hugh Johnson	APIL SIG Coordinator APIL SIG Secretary
Speakers	Jill Greenfield Lucy Gould Kiran Vasudeva Robert Smeath	Fieldfisher (on behalf of APIL Exec. Committee) Stewarts Law New Quadrant Partners Ltd New Quadrant Partners Ltd
Attendees	Alison APPLEBOAM MEADOWS Paul ASHURST Robert AYLOTT Rachel BOTTERILL Jessica BOWLES Eurydice COTE Aleksandra DABEK BREZA Kevin DIGBY Terry DONOVAN Dominika FLINDT Alison GOLDNEY Kevin GREALIS Ruth HEWITT Julie LESLIE Louise JEWKES Arthur KEITCH Olive LEWIN Edward LEWIS Shabana MASOOD Jodee MAYER Brian McFERRAN Bethany SANDERS Nicola SELBY SHORT Martin SPENCER Q.C. Katherine WILKINSON Riffat S YAQUB	Penningtons Manches LLP Shoosmiths LLP Minster Law Leigh Day Bolt Burdon Kemp Kingsley Napley Bolt Burdon Kemp Leigh Day Kingsley Napley Kingsley Napley Brethertons LLP Stewarts Law Shoosmiths LLP Duncan Lewis Hodge Jones & Allen Slater & Gordon Leigh Day Leigh Day Duncan Lewis Bolt Burdon Kemp Leigh Day Leigh Day Shoosmiths LLP Hailsham Chambers Leigh Day Hodge Jones & Allen

Speakers & Delegates: 32

Preliminary

Richard Lodge (RL) introduced himself to the SIG. RL introduced the Secretary, Hugh Johnson (HJ), the speakers and thanked Kingsley Napley for hosting the SIG at their offices and for providing the welcome refreshments. RL explained that there would be drinks and informal discussions after the meeting.

RL noted that minutes will be prepared by HJ after this meeting and similarly posted online, with speaker presentations.

RL thereafter outlined the programme for the evening, which is broadly “to protect the damages award” being a different approach for the spinal injuries group, but one that was relevant to many of our clients and upon which we may not attend training/seminars quite so regularly as neurological injury. He thereafter introduced the first speaker, Jill Greenfield to address the SIG as to the actions being taken by APIL during what continues to be a time of substantial change for the profession and injured Claimants alike.

APIL EC Update

The details of the EC updates are intentionally omitted from the Spinal Injury SIG minutes at a time of fast moving development. The APIL office can be contacted for details of all current EC activity and initiatives.

HJ then introduced the first of the guest speakers, Lucy Gould.

The Effect of Divorce on Personal Injury Damages

Lucy Gould

Lucy Gould (LG) explained that as a matter of principle, the damages available to a client to include the home if shared with a spouse/the family were to be treated as divisible assets on divorce. The purpose of the presentation was to look through the issues in further detail and to consider what, if anything, could be done to protect the damages award for the Claimant.

LG began by outlining the essentials of divorce law, before turning to what she described as a 3 step process to the distribution of assets –

- Computation (of the total assets);
- Quantification; and
- Departure (i.e. whether to split the assets differently from a 50/50 division)

In respect of the latter element of asset apportionment, LG considered that there may be scope, particularly when preparing the Schedule of Loss to give emphasis to items such as care need and to put detail in the narrative to emphasise the essential nature of specific vehicles or equipment. Clearly unapportioned elements – the award for PSLA or items commonly split on divorce such as the loss of earnings claim, will inevitably be treated as matrimonial assets.

LG then considered the former matrimonial home. Whilst there is a limit to what can be done where a divorce occurs after a settlement, where parties are already separated/separating, there may be scope to purchase a separate property (rather than to co-mingle marital assets).

LG noted that there is clearly a role for post-nuptial and pre-nuptial agreements. She considered the enforceability of such agreements and the recent case law.

Following the presentation, questions were raised from the floor. LG emphasised that post and pre-nup agreements should likely be considered/advised in all cases (as appropriate). She conceded that if a divorce is going to occur then clearly the Claimant will be materially worse off. In recommending emphasis be given to needs, this was a matter of presentation of the injury claim rather than any approach to mislead regarding the Claimant's assets.

Trusts and the Court of Protection – Protecting the Award

Robert Smeath and Kiran Vasudeva

Robert Smeath (RS) introduced both himself and his colleague, Kiran Vasudeva (KV) explaining their role in private client support to litigation firms.

KV provided all delegates with a “quick reference card” and noted that the starting point in protecting a client's damages award would always be to determine whether the Claimant had capacity or not. This would obviously have a bearing upon the involvement of the Court of Protection and within the context of active litigation, whether those costs could and should be claimed.

KV briefly considered simple, Enduring and Lasting Powers of Attorney before going on to consider in detail Personal Injury Trusts. KV explained that a Personal Injury Trust as a term does not restrict the type of trust that can be put in place. Although normally a bare trust, other trusts could be utilised – life interests, discretionary or s.89 disabled persons trusts. A bare trust has no special tax treatment, is readily accessible by the Claimant and is administratively easy to manage. In contrast a s.89 disabled persons trust may be useful in CICA claim involving a child, for example, where one may want to take steps to prevent the funds reverting to the tortfeasor parent in the event of death. KV then discussed the role of the trustee, lay vs professional deputies (or both) and their duties.

Thereafter, KV discussed issues relevant to the Court of Protection. As a general rule, the Court will want to consider only Financial Affairs and will be more reluctant to appoint a deputy to assist with Health and Welfare, where particular issues may be better addressed by specific applications. KV discussed the role of the deputy, the associated costs and recommended that witness evidence was obtained during the litigation regarding the costs to avoid any underestimates regarding the work involved. KV cited examples as to how the input demanded of the professional deputy could suddenly and unexpectedly increase.

KV highlighted the case of Watt v ABC [2016] EWCOP 2532 before Charles J and, in particular paragraph 92 of the Judgment, in which practice points were raised: It was highlighted that there is a need to consider the management regime for a substantial award from an early stage. Most importantly, for a claimant with a loss of capacity, it should not be assumed that a deputy will always need to be appointed, where a trust may make adequate provision.

RS then concluded the discussions and questions were taken.

Closing Remarks

RL then thanked LG, RS and KV for their presentations. He then indicated that he was unable as yet to remind members of the next APIL SIG, but confirmed that there would likely be two in the forthcoming year in addition to the APIL Brain and Spinal Injury Conference.

*Members should note that the APIL Advanced Brain and Spinal Cord Injury Conference is due to be held on **28-29 June 2017** at the Chesford Grange Hotel, Warwick. The “early bird” package is available until Friday, 27 January 2017*

RL then drew the meeting to a close and invited delegates to stay for refreshments and further discussion.

HJ
28.11.16