

APIL NORTH EAST REGIONAL GROUP MEETING

MINUTES OF MEETING

DATE 3rd May 2017

Speakers: "APIL campaign activity at a glance" – Claire Hodgson; "Cost budgeting update and proportionality" – Ian Cosgrove, Cosgrove Costing Agency; "Revised discount rate" – Mark Holt, Frenkel Topping

Attendees: See attendance list

Location: St James' Park

MINUTES

1. Claire Hodgson delivered the Executive Committee Update. The key points were as follows:
 - a. APIL are preparing a response about the discount rate and it appears that there is going to be a genuine consultation by the government.
 - b. APIL had an expert panel looking at the discount rate for them.
 - c. APIL continue to look for more case studies and information from members to help them, for example, cases where clients have been under/over compensated, any issues with PPOs.
 - d. APIL are unhappy about the speed of the consultation.
 - e. Claire said that if any financial advisors wish to contribute to the consultation, they should let Helen Blundell know.
 - f. The snap general election means that a number of things are on hold with the government at the present time.
 - g. In relation to whiplash claims, there are to be reductions for contributory negligence and a ban on pre-med offers (only for these claims). The government's Bill has fallen through and so the reforms will need to start again.
 - h. The press do not seem to understand what the proposed reforms could mean.
 - i. APIL continue to campaign about banning 'cold calling' but the government do not seem to understand the campaign.
 - j. In relation to fixed costs in clinical negligence claims, APIL has provided a response on the consultation. There are suspicions that the government do not understand clinical negligence claims and may think that the process is the same for every type of claim.
 - k. In Scotland changes have been proposed in relation to limitation issues. APIL have for people who lie about their health to be prosecuted – this arises from the Glasgow bin lorry cases.
 - l. Things are quiet in Northern Ireland because of the present political climate. Bereavement claims have increased to £14,200.
2. Mark Holt, Frenkel Topping, talked about the revised discount rate. He provided a detailed hand out, a copy of which is available. He also mentioned the following:
 - a. Mark was due to meet with the Ministry of Justice, with lawyers from Irwin Mitchell LLP last week. However, the meeting was cancelled by the Ministry of Justice - he suspects because of the snap general election.

- b. The Ministry of Justice want empirical evidence as to why the present system for setting the discount rate may not be right. Mark is assisting APIL president Neil Sugarman with a response to the discount rate consultation.
 - c. Mark noted that when Liz Truss was looking at ILGs she removed all short dated yields, and had she included them, the discount rate would actually have been around -1.
 - d. Insurers were clearly hoping for a quick reversal of Liz Truss' decisions but it is apparent that the only way that this can happen is by overturning *Wells v Wells*. New legislation would be needed in order to do this.
 - e. Mark considers that it would make more sense to have a panel of experts to agree how to set the discount rate.
 - f. Mark considers that insurers are now accepting that the present discount rate will be around for a little while, and defendant insurers are retaining him 18 months to 2 years into the future at present to advise on PPOs for settlement meetings.
 - g. It is apparent that defendant insurers are now trying to offer more PPOs than before. They are pushing for lower lump sum elements in awards of damages and trying to put more heads of loss into a PPO. Mark notes that courts could enforce a PPO settlement.
 - h. In terms of investment of lump sum awards, Mark notes that you can only put up to £1m into NSI, and get a 1% return on the investment. Mark commented that it would seem that there is no such thing as a risk free investment for Claimants.
 - i. Mark mentioned that there is still no apparent solution to *Roberts v Johnstone*. He has seen cases where defendant insurers have purchased properties for Claimants but this raises all sorts of issues regarding ownership and other family members living in the house. Mark notes that you cannot get a 2.5% return on an interest only mortgage as there are no such products available in the market.
 - j. There was a discussion by members that some Court of Protection teams still appear to be achieving a 4% return on investments. Mark noted however that after tax and inflation are factored in, you still get to 2%.
 - k. Mark noted that there are a lot of external factors that will continue to have a negative effect upon long term investments, for example, Brexit, the snap general election, and the situation in France.
 - l. Mark's closing comment was that the government have pledged further funds for the NHSLA. Now insurers will be paying more for settlements and more for care costs therefore, and so actually the government is likely to have to pay less for care in the future. Also, insurance premium tax will increase because of an increase in insurance premiums, which again, is a good outcome for the government.
3. Ian Cosgrove, Cosgrove Costing Agency, talked about cost budgeting and proportionality. He provided a detailed hand out, a copy of which is available. He also mentioned the following:
- a. In relation to assessments of proportionality of costs, the key is to try and move the costs judge away from looking just at the value of the case.
 - b. Indemnity costs are key.
 - c. It is still unclear what constitutes proportionate costs following the outcome of the cases referred-to on paged 4 to 5 of Ian's hand out, and it has now been over 4 years since the introduction of the new rules in April 2013.
 - d. Proportionality arguments can be put into the narrative when a Bill of Costs is served, but Ian considers that the Judges are unlikely to read the narrative and so it is key to get these points into the replies to any points of dispute.

- e. It is also key to consider making Part 36 offers, which play a part in provisional assessments of costs, as they will get you around the costs cap, because you will get indemnity costs if the offer is beaten.
 - f. Ian said that as far as he is aware there are no plans for hourly rates in fixed costs cases to change.
 - g. Ian advised that if members have any cases where there is a challenge to an ATE insurance premium, then this should be reported to the insurer, who should be asked to come up with a response to the challenge, so that it is not felt that we did not try to fight their corner.
 - h. It is important to engage assistance from insurance companies when there are disputes about the levels of insurance premiums, otherwise any shortfall is likely to come out of the client's damages, in cases where premiums can and should be recovered from the other party.
 - i. Ian considers that his role in relation to cost budgeting will change in the future as courts are now likely to give a view on hourly rates at Costs and Case Management Conferences following recent case law.
 - j. Ian gave a health warning to be careful about any cases that come out of the portal and settle for £25,000. They need to settle for more than £25,000 in order to escape fixed costs.
 - k. Ian noted that his recent experience of the SCCO was that the amounts allowed are very variable amongst various judges.
 - l. There was a question from a member concerning a pre-1st April 2013 ATE insurance policy. The level of indemnity on that policy has now been reached and a top-up is required. Ian considers that such a top-up would be an extension of the policy and not a new product. However, for it to be an extension of the policy the client would have to remain with the same insurer, and there is a concern that the insurer will charge a very high premium. Ian's advice, if the premium is high, would be to write to the Defendant Solicitor to advise them of the position, as it is they who would ultimately be paying for the premium in a pre-1st April 2013 personal injury case, if the case is won.
4. Joanne Willits asked members to raise any topics that they would like to be addressed at future meetings. Members are to speak to Joanne or Rebecca Maddock (secretary) if they want to pass on any ideas.

Rebecca Maddock, Secretary
17.05.17