

**MINUTES OF APIL INTERNATIONAL SPECIAL
INTEREST GROUP MEETING ON 1 MARCH 2007**

The meeting was chaired by Alberto Perez Cedillo (APC), Co-ordinator.

A talk was given by Julia Bateman (JB), Justice and Home Affairs Policy Advisor of the joint Brussels office of the Law Societies.

Victoria Harvey of the Executive Committee was also in attendance.

Julia Bateman began by explaining the role of the Law Society office in Brussels. She explained that their role is to follow developments in civil litigation and to keep an eye on European Legislation on behalf of the English/Welsh legal profession. Effectively, they act as "the eyes and ears" of the British legal profession.

JB explained that the office in Brussels is a small office, which has been going for about 15 years.

JB gave an overview of the EU legislative process and explained why this can often be a slow process.

She explained the difference between a Regulation and a Directive.

JB's talk is well summarised in the handout. However, there was much additional discussion, particularly about matters, which are relevant to Personal Injury Practitioners. JB was also able to update members on the present position on a number of matters.

Rome II

APC said that personal injury practitioners are very concerned about this Regulation in particular.

JB explained that the purpose of the Regulation is to set up standardised rules, in relation to the law to apply in personal injury cases, throughout the EU.

APC said that APIL had wanted the applicable law to be that of the victim's domicile. This was initially considered by the EU, but then rejected.

It looks likely that the final decision will be that damages will be assessed in accordance with the law of the country, where the accident occurred. However, the Judge will be obliged to have regard to the individual Claimant's domicile, circumstances and standard of living.

There are many member States, which disagree with this approach.

Conciliation meetings are due to take place from May 2007 and this will be the last chance for any significant changes to be made.

JB expects that if agreement is not reached, the issue may be deferred, to look at, at a later date in a couple of years' time.

However, JB said that she expects agreement to be reached on Rome II, because it has been going on for such a long time.

There was discussion about how the European Parliament could accommodate differences in valuations of damages between various countries.

JB explained that the UK has opted into the Rome II Regulation, but not the Rome I Regulation, because there was strong lobbying from the City of London on Rome I.

If Rome II is adopted, it will be two years before it enters into force.

APC said that if Rome II is adopted, this would dramatically change what happens to valuation of damages in the UK, in cross border cases.

JB said that the English approach has always been that the applicable law is the law of the forum.

With Rome II, if, for example, an English person had an accident in Spain, then the English Court would deal with the case, but would apply Spanish Law.

There was a comment, from one of the members, that the applicable law may also be subject to whatever the parties contract.

Tour operators will have commercial considerations, when they consider their terms and conditions, in the light of Rome II. On the one hand, it may be more favourable to them if the applicable law is not English Law, because damages could be lower. On the other hand, this could be a disadvantage, because liability is often stricter in countries, other than England. This is something, which the tour operators will have to weigh up.

Small Claims Regulation

JB confirmed that this is now in its final stages of adoption and is expected to be adopted in April 2007.

It is a paper based, automated procedure.

Legal representation is not mandatory in this procedure.

As far as costs are concerned, the losing party pays, but only where those costs are proportionate to the claim. It is up to the National Governments, to decide on the definition of "proportionate".

When the final text is ready, the Department for Constitutional Affairs will consider how they will deal with the issue of proportionality of costs.

Alternative Dispute Resolution

JB explained that there is effectively a deadlock on this at the moment.

There has been discussion about setting rules on mediation. However, those member States, which have a strong mediation culture, were concerned that standards would be dragged down.

The present suggestion is that recommendations are made for best practice and that peer assistance is given by those countries, which have a stronger mediation culture, to those with a weaker mediation culture.

The main aspects of the legislation will deal with the following:

- Defining who can be a mediator.
- Confidentiality.
- Enforcement.

Legal Expenses Insurance

APC said that there remains controversy over the issue of the client's choice of solicitor. The present position is that Claimants are entitled to choose their own solicitor, but only at the point when proceedings are issued.

Limitation

JB explained that PEOPIIL have carried out research, to show where problems lie on cross border personal injury disputes.

A common problem is limitation periods.

The idea is that limitation periods in cross border personal injury cases are to be harmonised.

A limitation period of four years is currently proposed.

There will also be rules, in relation to when, or how, the limitation period could be suspended.

Diana Wallis MEP has drafted a report, with PEOPIIL's proposals attached.

The onus is now on the European Commission to look at whether harmonisation is a good idea.

Harmonisation of Personal Injury Damages

There is suggestion of standardised scales, with some variation by individual member States. However, there is argument that this goes against judicial discretion and taking into account the Claimant's individual circumstances.

APIL lobbied against this suggestion.

However, the insurance industry is a strong lobbyist at European level, so this is not an issue, which is going to go away.

Fifth Motor Insurance Directive

This has to be implemented by June 2007.

It was agreed generally that this will not have any direct impact on the UK.

International Bus and Coach Transport

There has been consultation and a forum to look at the key issues relating to this.

There has been discussion about the possible harmonisation of liability schemes, for personal injury and death.

The legislative programme was due to start at the end of 2006, but has now been delayed and will probably take place around mid 2007.

The proposal from PEOPIIL has been that there should be strict liability up to a certain level, and fault based liability thereafter. There should also be provisions for early interim payments.

Lobbying

JB explained that the insurance industry is well mobilised, as far as lobbying is concerned.

However, the Law Society also has a strong voice and they need to hear, from practitioners, what the issues are.

The Department for Constitutional Affairs is also keen to hear from practitioners.

She said that both the Law Society and the DCA have “open doors” for lobbying. The best time to lobby is when legislation is at its early stages, such as when they are responding to consultations.

Legal Aid

No attendees reported any particular problems in this area.

Service of Documents

JB said that the Service Regulation has been under review and will be implemented in the next two months.

Cross Border Taking of Evidence

No particular problems were reported by attendees.

Victoria Harvey – EC Update

Ms Harvey updated members on the following:

- Compensation Act – comes into force August 2007.
- Claims Management Companies to be regulated as from 6 April 2007.
- APIL’s representations to the DCA in relation to third party capture and regulation.
- Outstanding Law Commission report.
- Mesothelioma Protocol.
- Compulsory insurance tracing code.

Ms Harvey also reminded members to respond to the APIL surveys. One has already been sent out and members were reminded to complete this.

A further survey will be started shortly and members were encouraged to respond.

Ms Harvey also fed back on the surveys relating to Garrett & Myatt. There has been very little response, which perhaps indicates that there are no major problems.

If members attend a Detailed Assessment and succeed on the Garrett and Myatt arguments, they should update APIL.

There then followed general questions.

A member asked whether there will be sanctions for solicitors, who take a case from an unregulated Claims Management Company. The answer to this was not known. However, it was expected that there would be some form of sanction.

The meeting concluded at 7.00pm.

Xanthe Andrews
Secretary, International Special Interest Group