Minutes of APIL Area Meeting
At Farnborough 28th February 2006

We had a good turn out on the above date; 21 attendees

Andrew Sands of the Nester Partnership came along to speak about "periodical payments – a practical approach".

Andrew is a Partner in the Nester Partnership and was for many years himself a PI and Clinical Negligence practitioner.

PPOs have been with us for approximately 1 year now and the DCA wishes to make them more prevalent.

Advantages of PPOs

- Guaranteed secure income
- Tax free income
- Linked to Retail Prices Index

Disadvantages

- Inflexibility
- Lack of finality. Often Claimants will wish to draw a line under their claim.
- Linking to the RPI can often diminish the value of the Fund
- Opportunity cost

DCA's Approach

Where possible pay future losses as PPOs.

Resist capitalisation.

Obviate need for medical evidence re life expectancy.

Insufficient capital sum?

Ultimately inflexible.

A more pragmatic view

Need to have some flexibility.

Need to have some contingency fund.

Sufficient capital must be available where a Roberts v Johnstone accommodation claim is payable.

Indexation in relation to future losses.

Life expectancy is still an issue.

Case study- Dr Lim Poh Choo v Camden and Islington Area Health Authority

Settlement of approximately £250000 in 1979.

Approximately £1.375 million under management now.

Nursing fees in 2005 are approximately £65,000 per annum.

If a PPO had been imposed then, insufficient money would be available for care. Cost of care calculated as £8000 per annum in 1980. RPI equivalent would now be £25,000 per annum.

Another example used was Judges salaries increases over a 10 year period as against the RPI.

This case demonstrates the need for some capital lump sum.

Importance of contingency fund

He gives the example of a 12 year old claimant with a long life expectancy.

A. Periodical payment for care and case management.
1) Up to age 19 - £40,000
2) 19 - 40 - £50,000 per annum
3) 40 – rest of life - £70,000 per annum

B. Loss of earnings.
1) 22 – 45 - £45,000 per annum
2) 45 – 60 - £50,000 per annum
3) 60 for rest of life - £25,000 per annum

C. Capital equipment.
1) To age 40 - £20,000 every 3 years
2) 40 for rest of life - £30,000 every 3 years

In a case like this a contingency fund would be essential.

Other case studies

Godbald v Mahmood

In position of PPO against both parties.

However this was an unusual case involving an elderly gentleman where there were arguments with regard to local authority care.

Walton v Calderdale

Arguments with regard to level of PPO to be imposed. Court imposed PPOs of £55k per annum.

Flora v Warkom

Interesting case where Irwin Mitchell pleaded PPOs and sought a 4.5% per annum increase as against 2.5% (RPI). Relied on economists report. Application to strike this part of the claim out by the defendant which was refused by the Judge so it remains to be seen what Trial Judge will say.

There is going to be a lot of JSB training over the next year.

There was not a great deal of evidence from the floor with regard to District Judge's attitude in this area to PPOS. It is after all still early days yet.

Statements of case

If possible Claimant should set out reason preference for PPOs/ lump sum and Defendant should do likewise. However there is a practical issue as to how early on in the case one can realistically set out views.

It may often be the first or possibly second case management conference before reviews can be set out properly. Account will also have to be given for an reduction for contributory negligence/litigation risk or such like.

Annuity providers

What level of award should we be looking at a PPO?

Andrew says that anything above £125,000 damages ought to be seriously considered.

AIG will not quote for anything under £100,000.

Litigation Risk

We obviously need to be very careful when considering PPOs if there is litigation risk or contributory negligence. Clearly this is an area where expert advice is going to be required.

Anecdotal evidence from District Judges

There was not a great deal of anecdotal evidence from the floor.

Status of Defendants

YM v. Gloucestershire. Potential problem with foundation trust which could theoretically go bust.

MIB situation is covered by Thakkar v. Steeples.

Insurers such as MPS could give potential problem areas.

In those case Defendant would probably have to purchase an annuity.

Conclusions

The lump sum is still very much alive and well and if a claimant wants a lump sum I consent they will still be able to get it.

Life expectancy arguments are still going to be there if the award is split.

Security of claimants' damages is not always adequately dealt with by a PPO especially where there is a big care claim because cost of care will outstrip RPI.

Risks will still exist to a claimant if large PPOs are awarded.

There will still be a need for professional advice.

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E C Update from Amanda Stevens

Amanda Stevens very helpfully came along and gave us an EC update.

Small Claims Court limit

There has been an excellent feedback and it is understood that the report is imminent.

The Compensation Bill

There has been a lot of lobbying in the House of Commons.

On talking to the MPs present, it seemed a prime motivator for the Bill was to protect adventure centres for disillusioned youth who perhaps have been excluded from school and claims arising out of those centres are a very small proportion of the overall claimed.

Claims Management Companies

Amanda says that we may have to be wary of certain rehab companies which might fall into the category of claims management companies and may require regulation. There are of course many ethical providers. If anyone has experience of consumer credit type agreements being required to cover rehab fees, a higher fee where there is deferral or rehab companies engaged in cold calling or unsavoury advertising, they are asked to notify the APIL office.

NHS Redress Bill

We can expect some further news shortly.

Costs cases

There will be further costs cases going to the Court of Appeal in June (Myatt and Garrett cases) and Woolard v. Fowler on medical agency fees is also shortly due to be heard on appeal.

In terms of fixed success fees in PL cases however it would seem that there is no imminent news here.

BTE Panel Solicitors

Apparently the OFT is not interested in this but the FSA will be looking into it shortly.

Behavioural issues on behalf of Defendants

We are encouraged to report behavioural issues to APIL.

APIL's rehab directory

This will be updated later on in the year. It is emphasised that entries in the directory are not paid for (save the large spread adverts).

It is important that we monitor rehab agencies and feedback is appreciated.