

**MINUTES OF APIL AREA SOUTH MEETING AT POTTERS INTERNATIONAL,
ALDERSHOT – 13 FEBRUARY 2007**

We had another very good turn out for the area meeting, 20 attendees on the above date.

The main speaker was Paul Kilcoyne, Counsel who spoke about "loss of future earnings; career models and the loss of a chance".

Paul is Counsel of One Temple Gardens and has over 20 years experience. He deals mainly in Claimant Personal Injury matters and is an APIL Member himself. He is ex-Treasury Counsel.

He has produced a very comprehensive hand out which is available to members so this will not be repeated.

He very helpfully ran through the traditional approach adopted by the Courts in the 1990's which adopted a "percentage loss of chance approach". This was adopted in cases such a Doyle-v-Wallace (1998) and Anderson-v-Davis (1993).

The approach was further refined in the case of Langford-v-Hebran (2001) which involved a Claimant who was pursuing a career in kickboxing and the Court looked at 4 different future scenarios and applied a percentage chance to each.

Paul explained how the landscape changed following the landmark case of Herring-v-MOD in which Paul was Counsel.

This case involved a young man contemplating a career in the police.

The Trial Judge accepted that it was likely that he would have joined the police and pursued a career therein but reduced his future loss of earnings by a percentage of 25% to reflect the chance that he would not have become or remained a policeman.

This approach was rejected by the Court of Appeal and has been followed in subsequent cases, Rashid-v-Iqbal and Dixon-v-Were.

However the position has been revisited in the case of Browne-v-MOD 2006 involving a Claimant aged 24 who enlisted in the army in 1998 but within 8 weeks into her training suffered a severe left ankle fracture which lead to premature retirement in 1999.

The Trial Judge accepted she would have completed 22 years service with an immediate pension entitlement at the age of 46 and applying Herring awarded her a pension loss in full.

The Court of Appeal said that it was wrong to adopt this approach in this particular case because in their view this was "an unusual turn of events" that would have a significant effect on pension rights.

In terms of a practical approach Paul gave some helpful guidance.

He indicated that in his view the recent approach the Court could well give rise to a return of the employment consultant, experts who have largely taken a back seat since the inception of the CPR in 1999.

He also emphasised very strongly the importance to gain lay evidence as to a Claimant's career prospects at a very early stage in proceedings.

He also helpfully reminded us of the case of Painting-v-Oxford University of which I am sure we are all aware, where a Claimant lost a significant proportion of its costs because of an exaggerated claim. We must of course be careful not to exaggerate claims in any cases.

EC Update

Unfortunately Amanda Stephens was unavailable but Victoria Mortimer-Harvey of Pattinson & Brewer kindly came to give us an update.

Case Management Companies

There have been further consultations and there has been a positive change in the draft rules so that CMC's have to declare the existence and amount of a referral fee. Unfortunately however there will be no compulsory professional indemnity insurance, at this stage.

Third Party Capture

She said that the FSA will apparently regulate this but David Pinto did point out that he recently had a meeting with Tony Goff, Chairman of MASS, who has had a meeting with the FSA and it does seem as though there is a gap in regulations. On the point of third party capture this is a serious threat to all practitioners. Apparently it accounts for something like 20% of the Road Traffic Accident market and it must be regulated in order to protect Claimants. It was suggested that we all write to our MP's and also produce case studies.

Streamlining Process –

A consultation paper is awaited.

Small Claims Court –

We are strongly arguing against any increase. The DCA is suggesting an increase to £2,5000.00 which we oppose. Vicky said that our arguments are gaining momentum.

Damages –

There will be a Law Commission Report. The report will not deal with the issue of damages for non financial losses. The Government says this is a matter for the Courts.

Mesothelioma Protocol –

A draft Protocol has been produced and we are almost there with the final draft.

Tracing Code -

There is a very big concern over the ABI Insurers tracing code and measures need to be taken to improve the rate of tracing which is said to be round about 23%.

Myatt and Garrett Cases

There is not an awful lot more news.

However if we are to make representations on this point, again we do need some case studies.