

MEETING NOTES

DATE: Tuesday 27 November 2007

SUBJECT: Spinal Cord Injury Special Interest Group Meeting

LOCATION: Masonic Hall, Manchester

ATTENDEES:

- Mr Gary Boyd – Potter Rees Serious Injury Solicitors
- Mrs Helen Brunton – Harrowell Shaftoe
- Mr Grahame Codd – Irwin Mitchell (incorporating Alexander Harris)
- Mr Warren Collins – Davies Arnold Cooper
- Ms Adrienne de Vos – Bollin Legal Associates Ltd
- Mr Robert Jones – Tranters Freeclaim
- Mr Daniel Lee – Fentons Solicitors LLP
- Mr Peter Quegan – Bromiley Holcroft
- Mr Nigel Smith – Fentons Solicitors LLP
- Mr David Tomlinson – Barratt Goff & Tomlinson
- Mr Sunil Nannam – Express Solicitors
- Mr Robin Patey – Express Solicitors
- Mr Keith Cundall – Express Solicitors

1. Presentation by Steve Martin

Steve Martin, a leading expert in the provision of technology to assist with the consequences of disability, presented his opinion upon the potential solutions to overcome the difficulties caused by the case of Roberts v Johnstone.

An initial reminder of Roberts v Johnstone was given by the co-ordinator of the Special Interest Group, Warren Collins and members were reminded that the effect of the case was to provide that a Claimant was rarely awarded more than 50% of the additional cost of accommodation required as a result of serious disability (ignoring the cost of alterations) and it was frequently the case that a significantly lower proportion was awarded, in particular where there was a reduced life expectancy. The effects of Roberts v Johnstone were further complicated if there was a reduction in damages for contributory negligence.

Steve Martin had the benefit of maintaining a close, working relationship with many accident victims long after their damages claims had been concluded and was able to observe that accommodation issues caused significant problems when it came to funding accommodation and it was always the case that it was necessary for the injured individual to have to “borrow” from other Heads of Damages and/or make savings, particularly in relation to care.

It was recognised by the meeting that Roberts v Johnstone resulted in a significant disadvantage to the injured Claimant who was unable to realise the capital tied up in his or her property. Steve Martin put forward a proposition that insurers should be encouraged and/or ordered by the Court to enter into alternative agreements relating to provision of accommodation. It was recognised that insurers would be unwilling, in the vast majority of cases, to purchase accommodation and the purchase of any accommodation by the insurer would not necessarily be in the best interest of the Claimant but an alternative method, and the one proposed by Steve Martin, was that financial institutions should be able to make loans

representing the full capital value of the property (prior to alterations) on an interest only basis which would be repayable upon the death of the Claimant but with the ability to postpone the sale for a reasonable period to allow for dependents to find alternative accommodation.

Steve Martin has approached a number of financial institutions who have expressed an interest in such a scheme.

The members of the SIG who were present agreed that Roberts v Johnstone was not an appropriate method for calculating additional accommodation costs and it did need to be addressed by the Courts but they were not convinced that a loan scheme as suggested was necessarily the approach likely to be favoured by the Court, particularly as the overall cost to the insurer would be significantly higher than the Roberts v Johnstone approach. It was felt that few insurers would be prepared to voluntarily accept the long term funding of a loan and it remains to be seen how insurers would be able to fund periodic payments where the amount of the future payment varied not in relation to inflation but in relation to interest rates which could, potentially, fluctuate widely over a long life span.

It was agreed that there needed to be further debate on the subject but the issue could only be finally resolved through test cases or, possibly, through Law Reform.

2. APIL Executive Committee Presentation

This presentation did not take place due to severe traffic problems in Manchester which delayed the speaker.

**David Tomlinson
Secretary to Spinal Cord Injury Special Interest Group**

2 January 2008