

APIL BRAIN INJURY SIG MEETING

5 JUNE 2019

APIL ACTIVITY UPDATE

1. FIXED COSTS CONSULTATION

After a long wait, the Government launched a consultation on its intentions to implement Lord Justice Jackson's recommendations on fixed costs at the end of March.

In a ministerial statement justice secretary David Gauke said: "In civil litigation in England and Wales, the winning party is generally entitled to recover their costs from the losing party. The legal costs of civil cases have, however, been too high and too uncertain for a long time, making litigation riskier and less accessible than it should be and thereby undermining access to justice."

APIL provided evidence for Sir Rupert's review, saying it is essential to consider the work involved in conducting litigation and calling for a focus on costs control rather than "costs limit".

Jackson's recommendations were published in a 2017 report and included fixed recoverable costs in cases up to the value of £100,000 and the introduction of a new intermediate track. The Government is not planning to set up a new intermediate track, however, because the costs would be prohibitive. An early meeting has been held with Government officials where, among other things, the issue of exclusions to the new regime was discussed. Jackson himself was vague on this point and although we understand some complex personal injury cases will be outside the scope of the reforms we don't know any more than that at this stage.

APIL's response is now being developed by a working group before the consultation closes on 6 June.

2. DEPARTMENT OF HEALTH AND SOCIAL CARE CONSULTATION: APPROPRIATE CLINICAL NEGLIGENCE COVER

In our response to this consultation we said:

- With no obligation on insurers offering discretionary indemnity cover to honour the claim, or to demonstrate that they can meet the cost of a claim, injured people may be under compensated or not compensated at all.
- **State-backed indemnity scheme:** We believe that all providers of NHS services should be covered by a state-backed indemnity scheme. While we welcome the introduction of a state-backed scheme for GPs, we fail to see why any state-backed scheme should not cover all healthcare professionals providing NHS services, including, for example, dentists. This would ensure certainty for both the healthcare professional, and anyone who is injured by their negligence and needs to bring a claim for compensation.
- **Legislative change for private healthcare providers:** We support the Government's preferred option for legislative change for all private healthcare providers, including GPs and dentists providing services in a private capacity. APIL members report that they have experience of medical defence organisations exercising their discretion not to pay out for an insurance claim, and this leaves the injured person unable to seek redress.
- There should also be a requirement that those who hold private indemnity insurance are checked annually by their regulator, for example the General Medical Council, or Nursing and Midwifery Council, to ensure that the insurance that they hold is appropriate and will meet the cost of any claims brought.
- **Run-off cover:** Indemnity cover provided by the state backed scheme, and by regulated insurance contracts should also be required to include run-off cover.
- **Unlimited cover:** any cover provided should be unlimited, to ensure that regardless of the value of the claim, the injured person can obtain the compensation that they need to be put back, as closely as possible, to the position they were in before the negligence.

The Government will publish a summary of responses to the consultation (which closed in February) before any further action is taken.

3. PARLIAMENTARY RECEPTION

APIL holds a reception in the House of Commons most years. It's an opportunity to meet MPs and peers from right across Parliament and creates a platform from where we can build on our campaign work. It's also attended by journalists.

This year we will be talking to MPs about the stories behind the headlines, and we'll launch a new booklet called Reality Check which sets the record straight. We will also be talking about the fall in damages since the LASPO Act, and discussing how we should be treating vulnerable injured people in our society.

Ends

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