

# JUNIOR LITIGATORS/DAMAGES JOINT GROUP MEETING

21 NOVEMBER 2019

## APIL CAMPAIGN ACTIVITY UPDATE

### 1. APIL STRATEGY

The EC is working with our CEO Mike Benner to develop a strategy for APIL's future development. Mike is taking the opportunity to lead a root and branch examination of the organisation, its objectives, what it does and how it operates. I know Mike will welcome any input from you so please get in touch with him with your thoughts. The strategy will be presented to members at the AGM next year, and disseminated more widely among the membership for those who can't attend.

### 2. CIVIL LIABILITY ACT

#### Key changes (by way of recap):

- rigid tariffs for whiplash damages
- change in the way the discount rate is calculated – it is now based on the assumption that injured people will take some risk when investing lump sum compensation
- independently, but linked, is the increase of the small claims limit to £5,000 for all RTAs and to £2,000 for Employers Liability (EL)/ and Public Liability (PL) claims. (NB: this move does not require primary legislation.)

#### Update

- Discount rate set at minus 0.25% on 15 July. Came into effect 5 August. A much lower rate than expected. Insurers very angry, claiming they were led to believe it would be 1%. APIL gave it a cautious welcome – it is better than we expected, but it is still based on the wrong premise (because it forces injured people to take some risk with their investments). This will be reviewed in five years and we will be collecting as much evidence as we can to try to influence that review.

- Discount rate in Scotland announced on 30 September as minus 0.75%. One of the key differences between the jurisdictions is that the calculation for the rate in Scotland is set out in the legislation and is calculated by the Government Actuary, not by a minister. Discount rate in Northern Ireland remains at 2.5%. We have been lobbying for change and will press for this again now the change has been announced in Scotland.
- Whiplash tariffs and small claims reform still due to be introduced in April 2020, although you'd be hard pressed to find anyone who thinks that will happen, especially with a General Election inbetween. We have written to the Lord Keen and MoJ officials to say implementation should be delayed.
- The MoJ has announced that children and protected parties will be exempt from the small claims limit increase to £5,000 for RTAs. BUT they are still not exempt from the whiplash tariffs, and the MoJ is really digging its heels in on this so we're reiterating our concerns about that as well.
- No clarity about how alternative dispute resolution (ADR) will work. Rehabilitation specifically excluded from the system – is this, then, the 'minimum viable product' we've heard about? If so, is it really fit for purpose? We don't think so.
- The MoJ is working with the Civil Procedure Rules Committee to sort out the rules in time for implementation in 2020. They are expected to be laid in January.
- What are the chances of an April 2020 implementation? Lord Keen has repeatedly said that he wants it to be 'done right'. The MIB is also saying that if the system can't be made to work properly, it will advise the MoJ. Are they getting their excuses in early? We will have to see.
- Of course, it's impossible to predict the outcome of the election and there was strong opposition to the whiplash reforms right across the House so there is now a chance that they won't be implemented at all.

### **3. APIL MANIFESTO**

It is incredibly important that we start educating prospective MPs about the very real needs of injured people as soon as possible, which is why we've developed our own manifesto for parliamentary candidates, based on the principles of injury prevention and fairness for injured people.

Many of these candidates may have views which have been coloured by Government and insurance industry propaganda about whiplash so our manifesto points out to candidates that the lives of people who suffer serious and needless injuries can be changed forever. These are often vulnerable people who will need compensation to help them pay for the care they need. They should not have to take financial risks to try to make ends meet, or live in the constant fear of their money running out.

The core principle of the manifesto is the importance of preventing needless injury from happening in the first place. This is a simple proposition with which no sensible candidate can argue, so we're asking them to become champions for the prevention of needless injuries.

The manifesto also makes the point, of course, that when the worst does happen, too many people are let down by the justice system. So candidates will also be asked to commit to the principle of ensuring injured people receive full and fair redress, to support calls for a modern law on bereavement damages, as well as a fund of last resort for sufferers of asbestos-related diseases.

The key to making this work is our membership. Parliamentary candidates care about what local voters think and therefore we need you, as APIL members to engage with us and lobby your local candidates.

Building a relationship with candidates before they become MPs works, and makes it much easier to turn their words of support into action as they progress through their parliamentary careers.

As APIL heads towards an exciting new strategy for the future, don't miss this opportunity to take an active role in helping to build a foundation of support which will help us lead the sector towards a brighter future for the needlessly injured .

All you need to do is email our public affairs officer, Sam Ellis, and tell him the name of your constituency, or your postcode if you don't know the name, and he will send you everything you need to contact your candidates – he will make it really easy!

#### **4. BEREAVEMENT DAMAGES**

As I mentioned, bereavement damages is a key part of our manifesto, because APIL has long campaigned for the Scottish system of bereavement damages to be adopted in the rest of the UK. So when the MoJ published a draft remedial order to allow couples who have cohabited for more than two years to be awarded bereavement damages, we took advantage of the opportunity.

We submitted evidence calling for wider reform to both the MoJ and the Joint Committee on Human Rights which is scrutinising this issue. The committee has taken up the point and recommended wide-spread reform.

The joint committee said “the current list of eligible claimants is unprincipled, discriminates against other family members in analogous positions to existing eligible claimants, and stigmatises children”. It said the law on bereavement damages “as currently drafted risks further legal challenge”. The joint committee recommended the Government “undertake a consultation with a view to reforming” bereavement damages.

In its evidence, APIL also expressed its disappointment that it had taken the Government 20 years to extend eligibility to cohabiting couples, which had been recommended by the Law Commission in 1999. The Government had not responded to the joint committee's recommendations before the General Election was called, so we will be picking this up with the MoJ once Parliament returns.

To support our work on this issue, we're preparing a new report to highlight the differences between the laws on bereavement damages across the United Kingdom. It will also include polling on public attitudes by YouGov.

## **5. FUND OF LAST RESORT FOR ASBESTOS RELATED DISEASE**

We have also started working with Martin Docherty-Hughes SNP MP for West Dunbartonshire to campaign for a fund to help people with asbestos-related disease who can't claim all or part of their compensation because they can't trace their former employers' insurers. [NB: Martin is re-standing and is expected to be re-elected]

You may be aware that we campaigned for many years for such a scheme for people with mesothelioma and that was a successful campaign, but it was only ever meant to be a startpoint for further work. Again, this is something we will pick up after the General Election.

## **6. FIXED COSTS FOR CLINICAL NEGLIGENCE CLAIMS**

I'm sure you are aware that a group set up by the Civil Justice Council to look at fixing costs for lower value clinical negligence claims has failed to reach agreement. A report on the group's discussions was published by the CJC in October, and the next stage is for the Government to consult on the issue, although obviously we don't know when that will happen.

Suzanne Trask, the EC member who represented APIL on the CJC group said it wasn't possible to say if the proposed fixed costs would be workable, given that different firms have different working models.

There are a lot of issues still to be resolved, including the types of cases which should be excluded from the scheme. And the point we continue to make is that, in any discussion about fixing costs of clinical negligence claims, the emphasis should not simply be on cutting lawyers' costs, but about streamlining the process and making it more efficient to the ultimate benefit of injured patients.

The process has also come under fierce criticism for doing little to ensure that vital learning from cases of negligence could be integrated into this process.

Lorraine Gwinnutt

Head of Public Affairs

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