

CHILD ABUSE SPECIAL INTEREST GROUP MEETING

14 JANUARY 2020

APIL CAMPAIGN ACTIVITY UPDATE

1. APIL STRATEGY

Mike Benner started as our new CEO in July and, since then, he has been working very closely with APIL's senior management team and the executive committee to develop a new strategic vision for the organisation.

The completely new strategy is now in its advanced stages and will be presented to members firstly at the annual conference in spring and then through meetings like this, as well as written communications, of course. A formal communications plan is currently being devised.

The strategy will be based on APIL's core principles of ensuring injured people have access to justice, prevention of needless injuries, and driving excellence in legal representation.

In addition to that, we will be grasping the nettle of improving public trust in personal injury law, because it is fundamentally a mistrust of the law in this area, of personal injury lawyers, and of injured claimants themselves which is such a barrier to the work we are trying to do. It won't be easy to achieve, and it won't happen overnight, but we want to attack the issue and work is underway on the planning of that campaign.

To ensure the strategy continues to reflect the views of our members we asked the whole membership for volunteers to sit on our informal membership engagement panel, which now numbers 150 members. We're delighted that the panel is fully behind our strategic approach, agreeing that APIL should lead the sector in rebuilding trust, that we should be working to prevent needless injury, striving for excellence in the practice of personal injury law and championing the role that PI lawyers play in helping injured people.

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

- 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.
- 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.
- Can you help us with a research project which will inform the next discount rate review? If you run claims affected by the rate your participation is essential if we are to have persuasive evidence which ensures the next rate is fair for claimants.
- If you feel you can take part in this project you will need to provide a few key pieces of information on each claim affected by the discount rate. This will include the life expectancy of the claimant, the sums awarded for loss of earnings and care, and whether a PPO was offered by the defendant. This data is likely to be key to the calculation of the next rate.

- How this data is provided is up to you. Members taking part in the project could send data each time they close a claim affected by the discount rate, or could provide data periodically, for example every six months.
- The project will run until just before the next discount rate reviews for England & Wales and Scotland, both of which are expected to take place in 2024. This means that members and firms taking part will be asked to provide data on claims which are closed over the coming four years.
- If you are interested in getting involved or if you have any questions, please email john.mcglade@apil.org.uk.

Update – small claims reform

- Whiplash tariffs and small claims reform still due to be introduced in April, although you'd be hard pressed to find anyone who thinks that will happen, especially now we've had a General Election. We have written to Lord Keen and MoJ officials to say implementation should be delayed: while work on developing the system was permitted under election rules, that work took place behind closed doors, resulting in lack of transparency and collaboration. This needs to be resolved before the process can continue.
- 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 this month.

- 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.

Lorraine Gwinnutt

Head of Public Affairs

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