

OCCUPATIONAL HEALTH SIG MEETING

25 FEBRUARY 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.

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. INDEPENDENT INQUIRY INTO CHILD SEXUAL ABUSE (IICSA)

EC member Kim Harrison has made compelling arguments for the removal of the limitation period for historical child sexual abuse cases to the (IICSA) on behalf of APIL, which has been made a core participant in the inquiry.

Kim drew on APIL's role in debate around reform in Scotland, telling the inquiry that "the current limitation law, and the hurdles overcoming it, represents a significant percentage of potential cases that are rejected by firms at the new enquiry stage".

She said a balance needs to be struck between the sides to ensure fairness, but the current system is weighted too heavily in favour of the defendant.

Limitation is routinely raised as a defence which makes a big impact on the claimant's ability to bring a claim or proceed to trial or full settlement.

Judicial discretion in applying the three year limitation period, causes huge uncertainty for survivors. They often have to decide between settling their claims with a reduction in damages in case a judge decides not to disallow the limitation period; or proceeding to trial and taking the risk that a judge will refuse to allow the case to proceed out of time, resulting in the claimant losing and receiving no compensation whatsoever.

She also said the Association of British Insurers' (ABI) proposal for a pre-action protocol would not be enough to redress the balance on its own, and that any scheme proposed should be supplemental to court proceedings.

Kim delivered her closing remarks to the Inquiry earlier this month and our final written submission is to follow.

3. APIL MANIFESTO

Education of new MPs about the needs of injured people started before the General Election, with our own manifesto for parliamentary candidates, based on the principles of injury prevention and fairness for injured people.

The aim was to persuade 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.

Straight after the election, a personalised email was sent to all new MPs and an advert placed in The House, a weekly magazine delivered to every parliamentarian, which reiterated the key messages from our manifesto. Face to face meetings are now being sought with all new MPs to discuss the issues in person, as well as other key contacts such as shadow justice spokesman Bambos Charalambous.

Meanwhile, the Queen's Speech outlined a legislative programme which included proposals on patient safety, injured holidaymakers, and military veterans.

A Bill to establish a new compensation scheme for injured Thomas Cook customers provides an excellent opportunity for APIL to revisit our campaign for compulsory public liability insurance. The Government has said the scheme will help those "facing the most serious hardship as a result of life-changing injuries" who have been unable to receive compensation because the company had insured itself.

We will continue to oppose a proposed 10-year time limit on claims by military personnel and their families for personal injury and/or death which happen outside the UK. This will be included in the Armed Forces (Legal Protections) Bill. Our president, Gordon Dalyell, has accused the Government in the press of treating veterans as a "burden it wants to shake off as quickly as possible".

4. BEREAVEMENT DAMAGES

Now the election is over and the Brexit withdrawal Bill has passed, we can re-start work on our core campaigns. 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 took 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’s response was published earlier this month. It has refused a wider consultation but has confirmed that cohabitants of more than two years will qualify for bereavement damages. There will also be an increase in the statutory amount available, to account for inflation since the last change in 2013.

The excuses for no further change are that bereavement damages are a ‘token’ and that any change will mean undue intrusion into people’s lives at a difficult time. This does not seem to be a problem in Scotland, and that’s where we will look in our rebuttal points to what we think are really offensive arguments.

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

You may remember from our last meeting that we had plans 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. This campaign has fallen victim to the political climate of the past year but now we’re picking it up again.

This is not a new issue for APIL: Before, during and since the passage of the Mesothelioma Act 2014 and the establishment of the Diffuse Mesothelioma Payment Scheme we have called for more support for sufferers of other asbestos-related diseases.

Lord Freud, the minister who introduced the scheme, acknowledged that this issue needs to be addressed during debate in 2013, but nothing has been done since.

We've secured support from Martin Docherty-Hughes SNP, MP for West Dunbartonshire but before we go much further we we really need to get some examples of how the issue has affected our clients. We really need your help with this.

Can you help? If so, contact Sam Ellis at the office [NB – Sam will also be at the meeting, of course!]

Lorraine Gwinnutt
Head of Public Affairs
February 2020