

INTERNATIONAL SPECIAL INTEREST GROUP MEETING

16 APRIL 2020

APIL ACTIVITY UPDATE

1. CORONAVIRUS

The APIL office has been working hard to provide members with as much assistance and information as possible during the current crisis. You can find everything you need on a special page on the APIL website here: www.apil.org.uk/covid-19

Here is a flavour of what you can find on the page:

Daily Update - featuring information about caring for your health and wellbeing in this extraordinary situation; best practice information; new online training and webinars covering all the usual training issues you would expect, plus new material relevant to the crisis; relevant information issued by the courts; Government announcements; guidance on dealing with experts, and other useful links.

Training - The Covid-19 page has a list of training which is available on-demand.

APIL's membership engagement panel has also been asked for input on the particular training needs which would be helpful to members at this time. The panel's ideas are being considered by the training and accreditation committee so do look out for more news on this.

Collaboration with other organisations - APIL and FOIL have collaborated to devise a set of standard practices to help address members' concerns about working remotely and adapting to the new way the courts are operating in England, Wales and Scotland.

Also in Scotland, APIL, the ABI, FOIL and MASS have agreed a limitation protocol to which members can sign up – all details can be found on the Covid-19 page.

Similar discussions are underway in Northern Ireland – with the ABI about a limitation protocol, and with FOIL about the development of best practice. Look out for a further announcement on this soon.

NB: the APIL office is operating almost entirely remotely, and there are contact details for all the teams on the Covid-19 page.

2. ONLINE PROCEEDINGS IN THE COUNTY COURT

You might have seen in last week's Weekly News that we will soon be able to issue proceedings online in the county court, following liaison between APIL and HMCTS.

HMCTS has, as some of you might know, been testing a version of its online court for over a year with a handful of firms. While the litigant in person version has been live for a while, the version for use by legal representatives has remained in test mode only.

As the coronavirus outbreak worsened APIL contacted HMCTS to ask whether the test version could be made more widely available, even if only to allow online issuing.

A survey of APIL members at the start of the lockdown period identified an urgent need for this facility and the results were passed on to HMCTS which has been working flat out on both the legal and technical logistics to get the version up, running and capable of dealing with the additional capacity which is expected.

APIL understands that an announcement from HMCTS is imminent – look out for updates.

3. APIL STRATEGY

In uncertain times, it is more important than ever to have a strong strategic vision for the organisation and work has continued on the development of the APIL strategy, which will be presented to members in the next few months.

The strategy is 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.

4. CIVIL LIABILITY ACT

At the end of February the new Lord Chancellor, Robert Buckland, announced that implementation of the whiplash tariffs and small claims reform had been delayed until 1 August. In the statement he said "we need to do this right rather than hastily". The main reason for the delay was that the Civil Procedures Rules Committee had not yet provided the rules. But that still leaves some very important issues unresolved:

- One of our greatest concerns is the Government's decision not to include any form of alternative dispute resolution (ADR) in the new portal. Apparently "no practicable solution which gave sufficient coverage of ADR for claims could be found". So, instead of ADR, we are going to have "bespoke processes to enable litigants to go to court to establish liability". We have repeatedly told the Ministry of Justice, and Lord Keen who is leading on these reforms, that ADR is crucial if unrepresented litigants are to be treated fairly in the new system. It is widely acknowledged that the number of unrepresented claimants will increase as a result of these reforms, and it is simply not good enough for the MoJ not to be fully transparent about the absence of ADR.
- In the absence of ADR, the Lord Chancellor said in his ministerial statement that the MoJ "will ensure access to justice by developing bespoke processes to enable litigants to go to court to establish liability". Previously there have been suggestions that claimants would move between the IT portal and the small claims track for different parts of the claim, such as to establish liability. It is unclear whether this is the actual intention. Ministers do need to provide full details about these new "bespoke processes", how they will work, and why they will be a suitable replacement for ADR.

Implementation is less than four months away and we are concerned the reforms will lack the necessary safeguards to ensure consumer protection without a considerable amount of further work. Implementation of the reforms on 1 August was already a tight timetable for the MoJ, and the ongoing coronavirus crisis is bound to have implications in terms of staff absences, workloads, and diversion of Government resources.

We now plan to work with the Labour justice team to put pressure on Lord Keen to explain how he will ensure consumer protection in the new system and exactly what 'bespoke processes' are to be put in place before the August deadline.

5. 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 last month and our final written submission is to follow.

6. BEREAVEMENT DAMAGES

As most of you will know, 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 last year, we took advantage of the opportunity.

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

The joint committee's report was damning. It 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.

The Government's response was published in February. It refused a wider consultation but confirmed that cohabitantes 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 new amount of £15,120 will come into effect on 1 May.

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.

Lorraine Gwinnutt
Head of Public Affairs

April 2020