

## BRAIN INJURY SIG MEETING

25 SEPTEMBER 2020

### APIL ACTIVITY UPDATE

#### 1. INJURY PREVENTION AGENDA

August was quite a month for the cause of injury prevention!

You may be aware that one of our key strategic aims is to generate a national strategy for the prevention of needless injury.

This aim had a major boost with the publication of a report by a top UK think tank last month. *Better Than Cure* was made possible by a generous donation from APIL and was produced by the Institute for Public Policy Research (IPPR).

The report calls on the Government to treat injury prevention as a “public health priority” and advocates “a high-level cross-sector injury prevention strategy”, a key part of which would be the establishment of an injury prevention commissioner to co-ordinate different sectors and ensure Government action on the issue.

In a press release issued in response to the report, our chief executive Mike Benner said the report should be a ‘catalyst for action’ and that ‘the time to take injury prevention seriously is long overdue.’

A week later, APIL’s Injury Prevention Week was launched – this used to be just a one-day event but was extended to reflect both the strategy and the growing popularity of the day.

This year the theme was road safety for pedestrians and there were lots of elements to the event, some of which I’m sure you will have seen: content on Facebook, Twitter, LinkedIn; the launch of a new APIL Instagram account, a video demonstrating why you should **not** be looking at your mobile when trying to cross a road, articles in the press, and, for the first time, opportunities for MPs to get involved – and a lot of them actively supported the initiative.

## **Highlights:**

- 28 MPs supported the campaign
- Press circulation of 717,000 (including the Daily Telegraph and the Daily Star)
- 2 million potential impressions on the #IPWeek2020 hashtag
- Video viewed more than 18,000 times

We also had brilliant support from our members, including 53 blogs written by members about the importance of injury prevention.

## **A big thank you to everyone who supported the initiative.**

So now the team at head office is planning how to capitalise on both the report, and Injury Prevention Week to bring us nearer that goal of a national strategy for injury prevention.

## **2. BEREAVEMENT DAMAGES - UPDATE**

Back in July, we updated you on the Ministry of Justice's draft remedial order to allow couples who have cohabited for more than two years to be awarded bereavement damages. In evidence to the Joint Committee on Human Rights (which is scrutinising this issue) APIL called for wider reform. The committee took up the point but the Government refused to consult more widely on possible reform.

The remedial order will come into effect on 6 October. Prior to this it has been debated in both the House of Commons and the Lords, and APIL issued briefings ahead of both debates. The briefing supported the proposed changes, but warned that without further changes, the law on bereavement damages would not be fit for the 21<sup>st</sup> century. We've also had a private meeting with Labour's shadow justice minister, Peter Kyle who, in debate called the changes a missed opportunity.

There was robust debate in the House of Lords, where peers also approved the remedial order while calling for wider reform.

The Fatal Accidents Act was condemned as "an archaic piece of legislation" by Shadow Attorney General Lord Falconer of Thoroton. His Labour colleague Lord Hain branded the approach to bereavement damages across the UK as a "postcode lottery game".

APIL's calls for reform were recognised by Liberal Democrat peer Lord Thomas of Gresford, and Green Party peer Baroness Jones of Moulsecoomb. Both peers urged the Government to review the law.

Baroness Scott of Bybrook, who responded on behalf of the Government, refused to commit to any further review of the law. The minister did, however, promise to take the concerns of peers back to the Ministry of Justice.

The public affairs team at head office will follow up all these new expressions of support as we continue our long-standing campaign on bereavement damages and, as previously reported, the next stage will be publication of 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.

### **3. OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL - UPDATE**

As reported at the July meeting, this Bill will curtail a court's discretion to allow some armed forces personnel and veterans to be able to bring personal injury or Human Rights Act claims against the Ministry of Defence out of time: if the claim relates to an overseas operation, an arbitrary six-year longstop will be imposed.

APIL has raised concerns about the Bill with MPs from across Parliament, including with the Labour, SNP, and Liberal Democrat shadow defence teams. A good working relationship has been maintained with the political adviser to Labour's shadow defence secretary, who has continued to ask us questions and for advice about different aspects of the Bill. Parliamentary questions have also been drafted for both Labour and the Liberal Democrats.

To help assist with Labour's understanding of the possible consequences of the Bill, APIL arranged for the shadow defence secretary to speak to a client of Ahmed Al-Nahas, secretary of APIL's military special interest group.

A briefing was distributed to MPs after the shadow defence secretary secured an 'urgent question' in the House of Commons about the Bill. During the urgent question debate, MPs expressed the same concerns which had raised by APIL, with the SNP veterans spokesperson quoting extensively from the briefing.

In response defence minister Johnny Mercer told MPs, “it is simply wrong to assert that the Bill prevents service personnel, veterans or their relatives from bringing claims, because it does not change how the time limit is calculated”. We’ve now written to Johnny Mercer to explain that there are many different reasons why service personnel do not always bring a claim within the time limit.

The Joint Committee on Human Rights has launched a pre-legislative inquiry into the Bill and we have provided written evidence. We circulated a further briefing to MPs ahead of second reading debate which happened earlier this week. We’re assessing the key points of that debate now so that we can start working on drafting amendments to the legislation as a priority.

#### **4. VETERANS UK**

In other work for veterans we have written to the Ministry of Defence to raise concerns about the lack of information on its Veterans UK website about entitlement to claim for compensation through the civil courts as well as through the Armed Forces Compensation Scheme (AFCS). We also raised concerns about the lack of information about the importance of seeking independent legal advice.

Despite the MoD’s assurances that the wording on the website had been changed, it still does not make clear that veterans and armed forces personnel have the right to pursue civil claims.

So we have written to the MoD again and highlighted the importance of:

- applicants being fully informed of all compensatory options and the benefits of legal advice;
- transparency of the connection between the MoD and Veterans UK;
- claims handler training regarding handling claimants with mental health illnesses and complex cases; and
- record keeping.

We have also offered to develop an information leaflet in association with the MoD to ensure veterans and armed forces personnel understand all options available to them after suffering injuries during or as a result of service.

We’re currently waiting for a response.

## **5. GUIDELINE HOURLY RATES - UPDATE**

As reported at the July meeting, a subgroup of the Civil Justice Council is looking at the guideline hourly rates. The rates were last looked at in 2014. We now understand that there will be a formal consultation at the end of the year. APIL has established a working group to consider what data it should be collecting and what representations it should be making.

APIL will be making a submission to the CPRC and we are gathering anonymous data on market rates charged by firms which will form the basis of that submission. **All responses and data are being anonymised as we appreciate that this is market sensitive.**

A spreadsheet has been sent to one contact in each firm who has been asked to fill in the blanks and tell us what rates their firm charges for the four fee earner grades for various areas of expertise. Members are urged to encourage their firms to respond. Any queries please contact John McGlade in the office.

## **6. CONSULTATION ON CHANGES TO HUMAN MEDICINE REGULATIONS TO SUPPORT THE ROLLOUT OF COVID-19 VACCINES**

Our response to this consultation highlights concerns about using an unlicensed covid-19 vaccine; calls on the Government to underwrite and accept liability if significant injury is caused by any such vaccine, and says consumers should be given the full picture when receiving the vaccine, ie: they will be receiving an unlicensed vaccine which has not demonstrated the standards of safety which would normally be expected, and that the manufacturers are supplying it on the basis that they are protected from suit.

The response also highlights the underlying issue that the existing Vaccine Damage Payments Act 1979 is not fit for purpose.

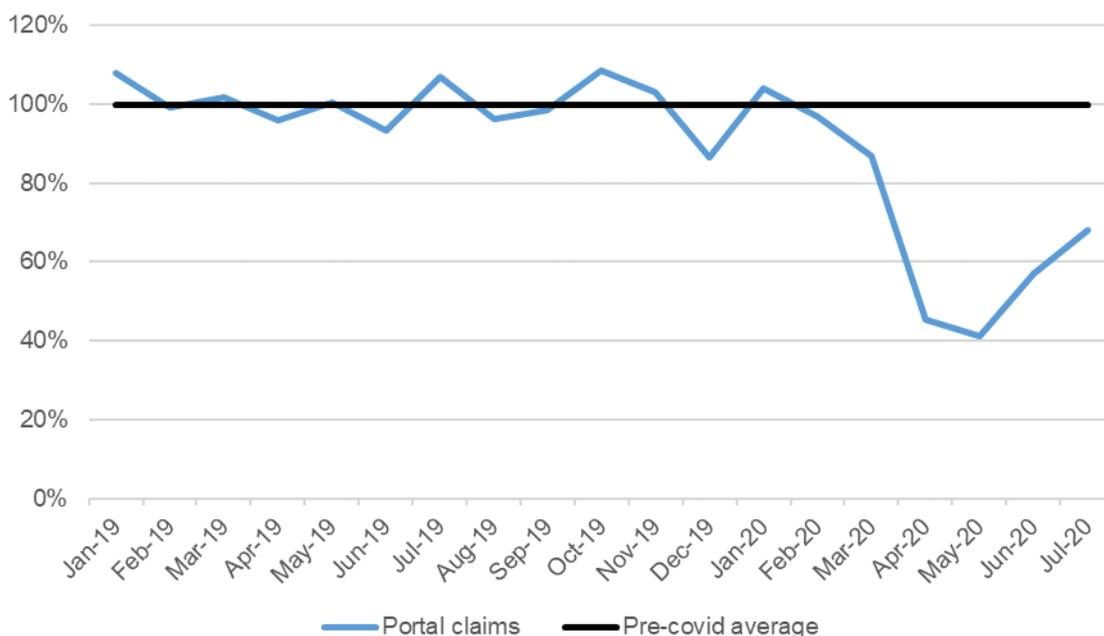
**This is just one of many consultations to which we are responding. If you would like to put forward views for any of our consultations, please make sure you read Weekly News for more details about ongoing consultations and how you can get involved.**

## 7. COVID-19: IMPACT ON PERSONAL INJURY

APIL's researcher has been monitoring the impact of the pandemic on personal injury.

Personal injury claims volumes fell dramatically following the imposition of lockdown. While volumes are now recovering, they remain some way off the levels seen prior to the pandemic.

This is illustrated starkly by the chart which looks at the number of claims submitted to the claims portal. The black line represents the "pre-covid" normality. As you can see, there was a dramatic drop in portal claims following the introduction of lockdown in March, and claims continued to decline in May. Despite a recovery beginning in June, portal claims remain at just 68% of their "pre-covid" level.



There has been a similar picture in clinical negligence. Here the number of new clinical claims reported to NHS Resolution (NHSR) has "*dropped since restrictions relating to Covid-19 were put into place*", according to NHSR's latest board papers. In terms of the longer-term impact of the pandemic, NHSR state that "*no conclusions can yet be drawn about the impact of Covid 19 on claims volumes and specialties*".

Over the coming months, APIL will continue to closely monitor data on claims volumes to understand the impact of the covid-19 pandemic on personal injury.

Lorraine Gwinnutt  
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16 September 2020