

INTERNATIONAL SPECIAL INTEREST GROUP MEETING

29 JULY 2020

APIL ACTIVITY UPDATE

1. GENERAL UPDATES ON ISSUES RAISED AT THE APRIL MEETING

a) Coronavirus

There are still regular updates, assistance and information going out to members and you can still find everything you need on the special page on the APIL website here:

www.apil.org.uk/covid-19

APIL staff contact details are also on this page as the staff are still working from home.

The latest update relates to collaboration with other organisations: as you know, 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 all UK jurisdictions.

In addition, 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. In Northern Ireland, the ABI and APIL have also drawn up an agreement on limitation. Both these agreements have been reviewed, most recently on the 23 July. It has been agreed that both agreements, for NI and Scotland, will be extended to Friday 14 August, after which date they will both come to an end.

The limitation agreement for England and Wales which was drawn up between Thompsons and the ABI (and supported by APIL) ended on 30 June.

b) Online proceedings in the county court

Members' firms can now sign up to a pilot protocol to issue proceedings online in the county court by writing to onlinecivilmoneyclaims@justice.gov.uk with the e-mail addresses of up to ten members of the firm who would like to use the service.

c) Bereavement damages

Parliamentary debate on the remedial order to extend eligibility for bereavement damages to couples who have cohabited for at least two years has now taken place and we briefed the shadow justice team ahead of that debate. The remedial order was approved by MPs, but shadow justice minister Peter Kyle said it was a "missed opportunity for a more comprehensive assessment of the bereavement damages scheme and broader issues relating to bereavement in the 21st century". Ministers continue to resist a full review of bereavement damages, despite the parliamentary Joint Committee on Human Rights recommendation for a review after it concluded the current law "is discriminatory against certain close family members". The remedial order still needs to be approved by the House of Lords before it becomes law, but is not yet known when it will be debated by peers. We will not be deterred by the Government's reluctance for further reform. Our campaign will continue after the parliamentary summer recess.

2. OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

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.

The Government has failed to provide an adequate explanation for this proposed longstop. Our briefings focus on the unfairness of these measures and a warning that the Government is taking advantage of its unique ability to legislate to restrict legal claims made against itself.

The Bill will also undermine the UK's commitment to human rights, as it will place a duty on all future governments to consider derogating from the European Convention on Human Rights in relation to overseas operations. Such a duty risks normalising the decision to derogate.

We're keeping up a lot of pressure on this Bill with regular briefings of key parliamentarians, including shadow defence secretary John Healey, who challenged defence minister Johnny Mercer about the impact on the rights of troops to claim against the MoD. Mr Healey said the Government has 'got important parts of this Bill badly wrong'. His concerns were echoed across all parties, but the minister remains adamant that the Bill is in the best interest of service personnel and veterans, so the work continues.

There is no official date for the Bill to be debated in Parliament but ministers have indicated it is likely to be in September.

3. GUIDELINE HOURLY RATES

A subgroup of the Civil Justice Council is looking at the guideline hourly rates. The rates were last looked at in 2014. It is unclear at this stage whether there will be any formal consultation with the profession as in previous years. In any event, APIL has established a working group to consider what data it should be collecting and what representations it should be making.

We will be making a submission to the Civil Procedure Rules Committee and 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. PLEASE ASK YOUR FIRMS TO RESPOND! Any queries please contact John McGlade in the office.

4. CONSULTATION ON THE REFORM TO RETAIL PRICES INDEX (RPI) METHODOLOGY

This consultation proposes to change the way that RPI is calculated. The proposed changes involve aligning RPI with a different measure of inflation – CPIH (consumer price index including owner occupiers' housing costs). Since 2010, the annual rate of CPIH inflation has been, on average, one percentage point lower than RPI. As a result, the proposals are likely to result in a lower rate of deduction for inflation.

This could result in a higher personal injury discount rate in jurisdictions where the rate is calculated with reference to RPI, such as Scotland. There are also implications for those claimants whose periodical payment order (PPO) is linked to RPI and any investments linked with RPI. The deadline is 21 August.

5. CONSULTATION BY THE DEPARTMENT FOR JUSTICE IN NORTHERN IRELAND: THE PERSONAL INJURY DISCOUNT RATE AND HOW IT SHOULD BE SET

The Department of Justice in Northern Ireland has launched a consultation seeking views on whether the legal framework for setting the discount rate should be changed (it is currently still based on *Wells v Wells*).

APIL is preparing its response to the consultation and has issued a survey to members in Northern Ireland to assist with that work.

This is in addition to the review of the rate under the current legal framework which is still ongoing. In that instance, it is proposed that the new rate should be minus 1.75%, but we are still awaiting notification of the minister's final decision on this.

6. CONSULTATION BY THE MINISTRY OF JUSTICE ON CRIMINAL INJURIES COMPENSATION SCHEME

APIL met with civil servants in early 2019 to make a case for reform as part of the cross-government victims strategy. The consultation does not provide for a change to the scope of the scheme - Government suggests that to do so would go against the original intention of the scheme and make it too expensive. There are proposals to introduce a dedicated compensation scheme for victims of terrorism at home or abroad. This would ensure that there is targeted awareness and that victims are signposted to the correct information immediately. The CICS is also consulting on the current structure of compensation tariffs and a proposal to remove the remaining "same roof rule" from the scheme which prevents adult victims of crime receiving compensation if they lived with their assailants as members of the same family and continue to do so. The pre-1979 "same roof rule" which denied compensation for some victims who lived with their attacker prior to 1979 has already been abolished.

Disappointingly the Government is not looking to change eligibility to the scheme, something that APIL has previously asked for. It believes that to do so would undermine the core principles of the scheme. Nor will there be any changes to the maximum award.

7. SEVERE INJURY HELP HUB

A new *Severe Injury Help Hub* has gone live on the APIL website TODAY. It summarises services which could be important to people, particularly in the immediate aftermath of a catastrophic event, and includes (for example) information about how to obtain relief from mortgage payments, and how to check if someone has established a lasting power of attorney to make decisions.

Following the demise of legal clinics and advertising in hospitals, the need for a service which directs people in crisis to information which could be a lifeline for them was identified. The hub provides contact details for charities, including those who can put injured people and their loved ones in touch with others who have had the same experience. Crucially, the service also guides people to accredited APIL lawyers.

Where to find help in the event of a bereavement; what to do if the injured person has no family, understanding complex medical language; and support for children of injured people and the siblings of injured children, are among the range of other subjects covered. The page will be reviewed, added to, and updated on a regular basis.

The venture will rely on search engine optimisation techniques so please support the project by sharing links to the page on social media.

8. INJURY PREVENTION WEEK

Final preparations are now being made for Injury Prevention Week, our annual public awareness event to remind people of the need to avoid needless harm and suffering. YouGov research is being used to support our key story about road safety for children. Research also identified that many pedestrians have no idea how to identify if a car is about to reverse into them so we'll also be raising awareness about what they should look out for.

This year, for the first time, we are contacting MPs to encourage them to get involved. MPs are being sent resources, props, and information to help them support Injury Prevention Week on social media and in the press.

As always, we encourage members to get involved and to run your own injury prevention initiatives to mark Injury Prevention Week. Does your firm have something planned? Let us know and we can support each other. Email Lizzy Freeman, APIL press and communications officer, at lizzy.freeman@apil.org.uk.

Lorraine Gwinnutt

Head of Public Affairs

27 July 2020