

CLINICAL NEGLIGENCE SPECIAL INTEREST GROUP MEETING

11 NOVEMBER 2020

APIL ACTIVITY UPDATE

1. CLINICAL NEGLIGENCE UPDATE – moratorium on claims against the NHS

As you may recall from our meeting in May, the APIL press office had a query at the beginning of the pandemic about the likely number of claims against the NHS as a result of the covid outbreak. We have not been asked about this issue since then, possibly because the NHSR's own analysis on this issue found that the number of new clinical claims has *"dropped since restrictions relating to Covid-19 were put into place"* and that *"no conclusions can yet be drawn about the impact of Covid 19 on claims volumes and specialties."*

Meanwhile, the Medical Defence Union is continuing its campaign for a moratorium on clinical negligence claims, citing research which found that *'of 2,108 UK adults 70% think doctors, dentists and other NHS staff involved in providing treatment to patients during the Covid-19 pandemic should be able to do so without the risk of the NHS being sued for negligence. What's more only 7% of respondents disagreed with this. As more NHS services resume, the MDU, the UK's leading medical defence organisation, is calling for the government to take action to stop the NHS being overwhelmed by an avalanche of negligence claims over the next few years.'*

The argument has gained very little traction in the press and the Government has so far shown little sympathy, replying to a parliamentary question on 24 July as follows:

'Healthcare professionals should at all times ensure they are competent to carry out any practice requested of them. If they are asked to work for an NHS trust or general practitioner practice, the existing state indemnity schemes will provide them with cover for clinical negligence arising from their activities. In the unlikely event that they are involved in the novel delivery of NHS services that fall outside the scope of these state schemes, we have ensured that they will be covered by the indemnity provision under the Coronavirus Act 2020.'

Parliamentary questions have since been asked about whether the Government will set up a cross-party group to agree how claims resulting from the covid-19 outbreak are managed, and whether there will be an independent, expert advisory committee to oversee claims against doctors. The response made it clear that there will be no further change in the way claims are managed or oversight is provided.

The fact that these assaults on the right to claim have not been successful does not mean we are complacent. The team at head office is monitoring the situation very closely and gathering evidence to launch a robust response as soon as it becomes necessary. This includes commissioning YouGov research to establish the public's views on clinical negligence claims in light of the pandemic, and there will be more research to follow.

The survey results show strong public support for the principle that those injured by the NHS should receive compensation from the NHS. In addition, very few people who support this principle think that compensation should no longer be provided if the injury occurred during the covid-19 pandemic.

2. APIL'S NEW STRATEGIC PLAN: Building a Brighter Future for Injured People

Our new strategic plan was published a couple of weeks ago. Please do take a few minutes to read it: the strategy is a major milestone for our association as we set out a vision for the future in our thirtieth anniversary. I hope you will welcome and embrace this exciting new direction – we now need to work together to make its ambitions a reality.

There are four key pillars to the plan which, if delivered effectively, will help build a brighter future for injured people. They are: to rebuild public trust in PI law; prevent needless injury; ensure prompt and full redress for injured people; and drive excellence in legal representation. Our campaign to rebuild public trust is particularly far-reaching and its success will require us to build support and embrace the capability of the whole sector to improve the environment for injured people. Most of us have practiced for years in a hostile environment where misconceptions have been bred from misinformation and, in some cases, poor standards. This has led to deeply entrenched public views that too many claimants are fraudsters and too many

PI lawyers are greedy ambulance chasers. This far-reaching strategy aims to address that.

3. BEREAVEMENT DAMAGES

Earlier this year, 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 draft remedial order has now 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 21st 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 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. The plan is for the report to be launched at a 'virtual' political round table meeting to be held early in the new year.

4 OVERSEAS OPERATIONS (SERVICE PERSONNEL AND VETERANS) BILL

At our last meeting, I told you we had submitted evidence to the Joint Committee on Human Rights about this Bill, which will end judicial 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.

We had also been compiling political briefings and holding meetings with MPs, including the shadow defence secretary. We also wrote to Johnny Mercer, Minister for Defence People and Veterans.

A LOT has happened on this in the past month. In a matter of weeks the principles behind the Bill have been debated in the House of Commons, oral evidence has been given in committee, amendments have been debated and the Bill will finish its parliamentary passage through the House of Commons next week.

APIL has had high-profile involvement at every stage, and the secretary of our military SIG, Ahmed Al-Nahas, gave oral evidence to the Bill committee.

To say that passions have run very high during debate is putting it mildly. Government spokesmen have resorted to name-calling and on one occasion the deputy speaker had to call for a 'drop in temperature'.

The problem is that the Bill conflates two issues: the desire of the Government to introduce a longstop on the prosecution of armed forces personnel for crimes committed overseas (what it calls 'lawfare') and then (apparently in the interests of fairness and consistency) also introducing a similar longstop for injured personnel who need to claim compensation from the Ministry of Defence. The problem is that the defence minister continues to claim that the Bill is 'good' for military personnel, when it very clearly is NOT good for all of them.

We're now reviewing all the arguments and preparing fresh briefings for when the Bill moves to the House of Lords.

5. VETERANS UK

In other work for veterans we are lobbying the Ministry of Defence about our 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 are also raising concerns about the lack of information about the importance of seeking independent legal advice.

6. GUIDELINE HOURLY RATES

At our last meeting we explained that data was being collected from our members to feed into a formal consultation being conducted by the Civil Justice Council at the end of the year. This data is now being analysed and will be discussed with our working group so we can finalise our arguments.

7. RESEARCH ON PERIODICAL PAYMENT ORDERS – CAN YOU HELP?

The Faculty of Actuaries is compiling a report for publication in January which will investigate the low take-up of PPOs, and we need to gather information to feed into that report, as a matter of urgency.

If you run claims affected by the discount rate, or where a PPO may be awarded, APIL's researcher, John McGlade, needs to hear from you about your views and experiences. To participate in this important research all you need to do is complete a short survey, which you can find in the link on the slide. Your individual response will be treated on a completely confidential basis and will not be shared with any other parties.

If you have any problems completing the survey, or have any questions about the research, please contact John direct.

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