

THE ONE AND ONLY

Being president of APIL has to be the best job in personal injury law, but what a time to take it on! It seems to me that the challenges facing claimant lawyers and their clients get tougher as the years go by.

Whilst much is said about putting injured people at the centre of the claims process, the reality is that their needs often play second fiddle to the constant demand to cut costs and truncate procedure. APIL does not have a problem with doing either, provided cutting costs and streamlining procedure does actually benefit the injured person. However, it is so often forgotten that personal injury claims involve a range of individuals all with different needs and different injuries. Accordingly, one size does not necessarily fit all.

I was very encouraged at APIL's annual conference last month to hear Lord Rodger of Earlsferry say that the law of tort is perhaps the most important area of law for many members of society. Accordingly, although it is fashionable for judges to urge that cases be settled Lord Rodger believes it is important the courts continue to give rulings in cases which are tried if this vital area of the law is to be kept refreshed and up to date. Accordingly, those who run those cases perform a service from which all members of our society ultimately stand to benefit.

I agree wholeheartedly with Lord Rodger because, as I said to delegates at the conference, I believe the job done by claimant lawyers has real value, not just because it is we who do actually put people first, but because the work we do is valuable to society as a whole.

I do not accept the view of many detractors that the law of negligence promotes an individualistic, rights-based culture. Rather, I would suggest this area of the law fosters a culture of mutual responsibilities. This view is confirmed by a closer look at the law itself. The conscious use of the word "neighbour" by Lord Atkin in *Donoghue v Stevenson* is notable. Harking back, as this word does, to the parable of the Good Samaritan, Lord Atkin was clearly alluding to responsibilities as well as rights when defining the modern law of negligence.

There are those who groan and roll their eyes when we talk about access to justice, but the right to justice lies at the very root of our society and who but claimant lawyers are going to fight for proper damages, support and medical care for people who have been injured through no fault of their own?

The rule of law in our society is maintained through a system of justice which has developed through the centuries as an adversarial system. While it may have its faults, the test of time

has shown this to be the best method of getting at the truth and delivering justice in individual cases.

We should be in no doubt about how important personal injury law is in delivering justice. It was Lady Justice Hale in *Parkinson v St James & Seacroft University Hospital NHS Trust* who reminded us that “the right to bodily integrity is the first and most important of the interest protected by the law of tort...”

So while we can always strive to find better ways of working, let us not forget the value of trying to achieve justice in each and every case. And let us also not forget that something as important as justice, like other vital aspects of our society such as healthcare and education, does come at a cost.

We all know, of course, that until a decade ago many cases were funded by legal aid. In those days the call was for legal aid to be removed because it was said everything would be so much better if claimant lawyers did not have the security of fees, win or lose, but had to be businesslike and accept risk. Legal aid was duly withdrawn. The change to conditional fees was followed by years of uncertainty and challenges at a time when it was necessary to rapidly develop skills necessary for the new regime. Ten years on it can be seen that claimant lawyers made the system work. More importantly claimant lawyers have maintained access to justice for those who need it most.

Now we are dealing with the challenge of the Ministry of Justice’s proposed new claims process for road traffic cases up to the value of £10,000. Once again the key concern for APIL in ongoing meetings, and now a series of mediation meetings, is to ensure the new system is focussed on injured people, delivering fair damages as swiftly as possible in appropriate cases while making sure that more complex claims receive the attention they deserve outside the scheme, so that the individual is not sacrificed to the process.

We have been calling from the outset for the proposed scheme to be properly piloted and for independent research to be conducted about the nature of complexities in road traffic cases valued at under £10,000, so that we can be as sure as possible that the new process will be fair to those who use it. I hope that, now the MoJ has announced a delay in its timetable for implementation of the scheme, the Ministry will take the opportunity to conduct this research and consider the possibility of a pilot scheme.

APIL has a long-standing relationship with ILEX and I know that the hundreds of our members who are also legal executives are deeply committed to training. I share that commitment and plan, during my year as president, to ensure that APIL helps its members to do their jobs as effectively as possible through our training programmes, so we can all provide the best possible advice to injured people in increasingly challenging times.