

**As a Firm we are very keenly interested in developments in the Personal Injury Field. In our August Newsletter we comment on :**

- **The threat to Benefits received by Personal Injury Claimants**
- **Expert Witness immunity under challenge**
- **Lack of Care in Nursing Homes ?**

### **Benefits in Northern Ireland.....England & Wales Next ?**

Chris Berry is a member of the Association of Personal Injury Lawyers APIL Members in Northern Ireland have reported to the Association instances in which the Social Security Agency has stopped or threatened to stop benefit of clients who are in the process of making PI claims which have not yet settled. Members believe this is being done without appropriate authority or legal basis.

Clearly the Social Security Agency's decision in this case seems strange and members would like to know the logic behind the decision. Certainly we would be very concerned if this became a widespread issue affecting England & Wales

Chris Berry takes the view that the Social Security Agency is in fact breaching the 52 week rule which means that there is a statutory disregard of compensation exceeding the threshold for benefit entitlement for a full 52 weeks after the receipt of benefit, so only capital in the client's possession 52 weeks after the award can be taken into account in relation to income support entitlement. No assessment should therefore be made for one year.

The statutory rule would cover low awards of compensation just over the threshold for entitlement. Chris would suggest to any client that larger awards are put into a personal injury trust so that the Social Security Agency has no right to stop the claimant's benefit, in either case. With the benefit of the PI trust machinery there is no reason why successful claimants should lose their benefits even after settlement of their cases.

### **Expert witness immunity**

A case which touches upon all personal injury claims could mean the end of expert witness immunity has been heard at the Supreme Court in January 2011. In *Paul Wynne Jones v Dr Sue Kaney*, the claimant alleged that Dr Kaney provided negligent evidence when acting as his expert witness psychiatrist in a Road Traffic Accident claim. Jones claimed that he suffered post traumatic stress disorder (PTSD) after the accident, but the defendant said he exaggerated his symptoms. Kaney originally supported Jones' claims but later changed her mind saying Jones had falsely denied previous psychological trouble and accidents, and signed a joint statement supporting the defendant's expert. However, it emerged during a High Court hearing that Kaney had signed court documents without reading them and she still maintained that Jones suffered from PTSD. The RTA claim settled for lower damages than it would have had if Kaney had supported Jones, and in April 2009 he launched a professional negligence claim against her.

Kaney applied to have the claim struck out on the grounds of expert witness immunity. The judge ruled in her favour but said that the claimant's arguments should be heard by a senior court. In his ruling Blake J stated: " I conclude that there's a substantial likelihood that, on re-examination by a superior court with the power to do so, it will emerge that the public policy justification for the [witness immunity] rule cannot support it." This will be the first time that the scope of the expert witness immunity has been tested, say Jones's counsel, Paul Walton and Roger ter Haar QC, who argue that the decision in *Hall v Simons* [2000] in which the House of Lords removed the barriers that protected counsel from suits means the immunity rule for expert witnesses should also be removed.

They also suggest that immunity is inconsistent with the right to a fair trial under the European Convention of Human Rights.

### **Training failures led to patient death**

The provision of care for our relatives whether in Nursing Homes or other Care Institutions is a cause for major concern for all parties involved. Whether the failure is to provide adequate treatment, ensure the safety of the patient or the provision of basic nursing care all are of significant issues of concern to those with family & relations receiving such care. If you have concerns then we may be able to assist, please contact the office for an initial discussion with Chris.

In this instance a care home has been fined £80,000 for serious training failures after a patient died as a result of “inappropriate and dangerous” restraint techniques. Staff at the Old Vicarage nursing home near Grimsby physically restrained forty-two year-old Anthony Pinder, who had learning and behavioural issues, for around 90 minutes in October 2004. He was eventually released and crawled unaided to his room, and was found dead a short time later.

Health and Care Services (UK) Limited, part of the Craegmoor Group, failed to ensure staffs were adequately trained to carry out the safe physical restraint of residents, Leeds Crown Court heard. The measures used to control Mr Pinder were described as “poor, inappropriate and dangerous”, although those engaged in the restraint were not held responsible; the management were held to blame for failing to train staff in safe restraint techniques.

The Commission for Social Care Inspectorate had highlighted an urgent need for safe restraint training just five months prior to Mr Pinder’s death, which prompted a written promise from senior management at Health and Care Services that improvements would be made. But, on investigation, it was found that no such training had been given. The company had failed to comply with a regulatory requirement, and failed to take all reasonably practicable steps to protect patients at the Old Vicarage, breaching section 3(1) of the Health and Safety at Work Act 1974.

After the hearing HSE Inspector Brian Fotheringham said: “Senior Management knew that staff at the Old Vicarage often had to physically intervene and restrain residents, but they failed to ensure that staffs were trained in appropriate and safe restraint techniques. This failure is inexcusable”.

**Please remember if you or your relatives and friends have suffered an accident or mistreatment then please mention our name Chris Berry of Berrys Solicitors and contact number 01253 620022.**

**We are here to help**