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SPEECH TO APIL ANNUAL CONFERENCE 2019

GORDON DALYELL, PRESIDENT

Good morning and thank you. I am honoured and privileged to be standing here as the new APIL president, particularly as the first president from Scotland.

The last couple of years have seen a number of challenges, and I would like to begin this speech with a few thank yous.

First of all, I would like to acknowledge the contribution of, and thank our outgoing president, Brett Dixon, for the sterling efforts that he has put into the role for not one but two years. The role of president used to, of course, be a two year term but that changed a number of years ago, as the particular nature of the personal injury world has led to increasing demands. That Brett was prepared to undertake these responsibilities for an extra year, and with the energy and passion that he showed, speaks volumes. He has shown tremendous commitment to the organisation and we owe him our gratitude.

I would also take this opportunity to recognise the extremely hard work of all the APIL staff whose dedication to what we do is hugely significant. In particular I would like to pay tribute to the work of our Senior Management Board, Abi Jennings, Lorraine Gwinnutt, and Marlene Lord. They have gone far and above in their efforts to maintain and indeed enhance the work of the organisation.

The last year has been one of change. The organisation is about to enter its 30th year, and the challenges facing our members and those we represent, are increasingly difficult. We have spent some time in recruiting our new CEO. The process was carefully planned, and rightly so.

After a thorough recruitment process I am pleased to welcome Mike Benner, to the role, and look forward to working with him in July. In fact, Mike is here at the conference and has already been getting himself up to speed and acquainted with the organisation. This week is an opportunity for you to meet him. I am confident that we have appointed the right person to lead us through the next stage of our journey.

In addition we have, as you will be aware from the AGM, approved a new set of Articles which introduce certain new provisions which we think will better equip APIL to meet the challenges ahead.

If you had asked me even five years ago whether a member from one of the Celtic jurisdictions would have become president of this organisation I would have replied that it was extremely unlikely. However, over the last few years, the nature of the reforms to each of the civil systems within the UK, as well as general challenges to injured people, have distilled into a very similar set of issues. Consequently, it makes perfect sense that we should work closely together and draw on our experience from each of the jurisdictions to best address them.

The theme of this conference is Making a Difference. It is important to recognise that at the heart of what we do for our clients, is that we are enabling them to exercise their right to access to justice. It is a phrase often used but its importance can never be over-emphasised. The phrase goes hand in hand with another crucial concept, The Rule of Law.

It is entirely appropriate and I am delighted that our keynote speaker tomorrow is Lord Reed, Deputy President of the Supreme Court. He has had a distinguished career. A highly regarded and well instructed counsel at the Scottish Bar, followed by appointment to the Court of Session and High Court bench, where he spent 13 years, before becoming one of the Supreme Court justices in 2012. He has been involved in many of the important decisions of recent years, though perhaps one of the most significant was in the “R v Unison” case. That case, and Lord Reed’s speech in particular, ought to be required reading for all of us involved in the law. There are many excellent passages and I would like to refer to a couple.

“At the heart of the concept of the rule of law is the idea that society is governed by law...Courts exist in order to ensure that the laws made by Parliament, and the

common law created by the courts themselves, are applied and enforced.....People must have unimpeded access to them.”

“But the value to society of the right of access to the courts is not confined to cases in which the courts decide questions of general importance. People and businesses need to know that they will be able to enforce their rights if they have to do so and if they fail to meet their obligations there is likely to be a remedy against them. It is that knowledge which underpins everyday economic and social relations.”

This is not the first reminder, but is a timely one of the importance of what we do and that there is a fundamental right of access to the courts. Despite the best efforts of the insurance industry and others, to try and demean the litigation process, there ought to be a continuing recognition of that right.

And it is incumbent on us, as representatives of some of the most vulnerable in society to ensure that right of access endures. Especially in these turbulent political times, we are obligated to show leadership and integrity. There has been a distinct lack of that across the political spectrum in recent months.

That is why we will continue to fight as hard as we can to ensure that throughout any reform proposals, the interests of injured people, and proper access to justice are at the forefront of our campaigning and lobbying. This is what does make a difference.

That emphasis on access to justice serves us well. Our background and training means that we know we need to be able to back up our position with evidence. Good evidence, proper evidence, not just assertion and speculation, such as we see from our friends in the insurance industry.

We're told the measures within the Civil Liability Act are essential as premiums need to come down. Yet, even before those are anyway near coming into force, we have seen a constant reduction in the number of claims over the last five or six years to the point where they are currently 15-16 per cent lower than in 2013/14.

From the ABI's own figures, we see, quarter on quarter, a reduction in what is paid out for bodily injury claims.

Perhaps one of the most concerning developments is the recent research from Fenn & Rickman, provided as part of the recent LASPO review, which confirms that the

awards in damages claims, over £25,000, have actually decreased since 2013, by some 17 per cent. Their conclusion is that this is a clear consequence of the cultural changes brought about by LASPO

Let's just think about that for a moment, since the implementation of LASPO reforms, there have been fewer claims, less paid out, but injured people are receiving less in damages.

That is not access to justice, that is an affront to justice.

What we do is important. Two years ago the theme of this conference was fairness. Fairness to injured people. That never goes away. Equally important is representation. Injured people need to have their interests looked after by those best placed to do so.

Every person in this room is committed to looking after the interests of their clients. Brett and I have spent some time over the last two years visiting a number of your firms to find out what is happening in your particular geographical and practice areas. It has been a very rewarding experience. Not only is it an opportunity to speak to you but we are constantly reminded just how passionate you all are about the work you do and your clients. It simply shows how important the job we do is to people and that we do make that difference.

That is why we, as an organisation, place so much emphasis on training and accreditation. Injured people deserve proper representation. The knowledge and support provided by you, in relation to the advice to clients, the importance of ensuring appropriate treatment and rehabilitation, can make a huge difference to the lives of injured people and their families. The APIL accreditation and training provision are highly regarded. Rightly so. It is that emphasis on quality, and continuing to strive to be the best representatives that our clients can have, which does lead to obtaining the best possible outcomes.

We will continue to provide as high quality training as possible, whether that be through conferences, training seminars, or increasingly by way of webinars. We understand that as members are increasingly busy and time-committed, attending a

seminar some distance away is unrealistic. An hour at lunchtime at the desk, or catching up later in the day, can be a far more effective way of keeping up-to-date.

Membership is important. We value what our members bring to the organisation.

And it is only right that I say thank you to you, the members who have helped with our campaigning, whether that is by supporting our social media campaigning, providing case studies, or arranging meetings with local MPs to put forward the case for injured people.

You are helping to make the difference. Please continue to do so. The more we interact with you, the more effective we can be.

There is, of course, a balance to be struck between campaigning and dialogue.

Let's look at the importance of dialogue. You need to be in the room to take part in the discussion. APIL have spent many years building relationships with civil servants and politicians. We don't always get what we want but we do have the opportunity to try and influence. The current whiplash reforms are an example.

The original catalyst was even before the EU referendum when George Osborne – remember him – proposed that damages for whiplash be removed altogether. We led the charge against that idea, and it was successful. Of course the reform proposals didn't go away and we have the provisions brought in in the Civil Liability Act. However we have steadfastly maintained the argument about their effect on injured people.

And we continue to be in the room.

We have been heavily involved in the discussions relating to and formulation of rules and practice to determine how precisely these reforms are going to be implemented. Members of the APIL EC are a core part of the various groups looking at the technical detail. This is entirely right as we have the expertise to be able to say to

Government what will work and what won't work. It is essential that the proposals are viable and our involvement is a crucial part of that process..

Similarly, in clinical negligence, we are extensively involved in the process considering how to apply fixed costs to lower value claims. Our EC representatives have great experience which they are utilising to ensure that the interests of injured people in a clinical environment are best protected.

This exemplifies the contribution of our EC members, where we utilise their expertise in specific areas, which enables the position of injured people to be put forward to best effect. As part of our restructuring of the organisation, we will be looking to expand those areas of responsibility so that across the PI and clinical negligence spectrum, we are presenting the case as strongly and robustly as possible..

I am especially pleased that we have five new members on the executive committee. They have a great deal of wide varied experience which will be of great value to the organisation and I look forward to working with them, along with the existing members in the coming year.

I would also like to welcome Sam Elsby, our new vice president, who I will be working closely with in the next year, along with our secretary John McQuater, and Jill Greenfield, our treasurer. We will continue to come out and meet you to ensure that you, as our members, have the opportunity to engage closely with us.

In Scotland, we have been involved in the legislation dealing with the discount rate, and introduction of periodical payment orders, and, before that, the funding of civil litigation reforms following the Taylor Review. We have managed to develop good working relationships with the Scottish civil servants and politicians which allows our clients' interests to be best served. Much of that has to do with relationships established some time ago which have led to us gaining credibility.

That is greatly helped by being able to point to hard evidence to support our case. This was recently seen in our submissions on the Damages (Investment Returns and Periodical Payments)(Scotland) Bill, when our research data, along with that of FOCIS, was able to gain a small, yet potentially significant, concession from the Scottish Government in relation to how the rate will be calculated. The absence of

any similar hard evidence from the insurance lobby was noted, and a factor in the change in position.

Even in Northern Ireland, where the ongoing political stalemate has made it difficult to maintain and build relationships, we pressed for civil servants to use new powers from Westminster. This helped to ensure the fulfilment of a commitment from 2016 to increase the amount of statutory bereavement damages this year. We raised the unfairness of the 2.5 per cent discount rate which remains in Northern Ireland, and we are hopeful for the return of devolved government so this can be addressed by politicians as soon as possible.

We face a number of common challenges. Insurer behaviour. Lobbying by insurers. Court provision being affected due to lack of resource. The extent of these challenges has never been greater, but it makes it all the more essential that we work together in as cohesive and collegiate a way as possible.

What we know from almost thirty years experience is that it is the small gains that count. We are not going to overturn whole pieces of legislation once a government has made up its mind. Bold statements to the contrary are simply hostages to fortune. What we can, and do do, is influence when and where we can, and work hard (often behind the scenes) to head off the development of damaging legislation in the first place. We point to specific aspects that need particular addressing, and by having a level of credibility, we can see those representations having some impact.

What will we be campaigning on?

Bereavement damages remains a very important campaign for us. We will not be deterred from arguing that the law in relation to providing fair recompense to relatives of people tragically killed in an accident, or through exposure to dangerous substances such as asbestos, ought to be the same across the whole of the United Kingdom.

The recent increase in the statutory amount in Northern Ireland to £15,100, is of course to be acknowledged, and is now over £2000 higher than the amount in England and Wales. However why does it still continue to be the case that it is cheaper to kill someone in Belfast, or here in Birmingham, than in Glasgow or Aberdeen. The Scottish system of individual close family members, and that includes

adult children, siblings, grandparents and grandchildren, being able to pursue their own individual claims with each claim being valued on its own merits, is one which ought to be adopted across the whole of the UK.

We will continue to argue for a fair discount rate. APIL has been at the forefront of campaigning on the discount rate for years. The change in 2017 came about, in no small part, due to the judicial review proceedings taken by us. We have continued to provide governments with robust, objective, comment and data. We have engaged at various levels. Those most seriously injured deserve everything that we can do to ensure that they receive fair compensation. The new rates, in both England and Wales on the one hand, and Scotland on the other, will be set later this year and we will be looking very carefully at how those rates are arrived at and to monitor the impact.

A common feature of legislation from both sides of the border has been the commitment to review matters after a period of a few years. That is important as it provides an opportunity to hold government to account, and to assess whether the objectives and rationale of the original legislation have indeed been met and justified.

To really make a difference, it's important to be proactive and to think about practical solutions to the issues which affect our clients.

And when this organisation's motives are questioned, as they sometimes are, we are able to point to our record and activity.

That's why when we talk about bereavement damages, for example, we draft our own legislation and approach MPs who may be interested in taking a Bill forward; we conduct research on public opinion to strengthen our arguments.

When we read misinformation in the press or Government documents we write letters, of course. But we also write creative booklets and fact sheets which set the record straight, and which we take direct to Westminster at individual meetings with MPs and ministers, and at our parliamentary receptions. We set up proactive social media and press campaigns to spread the word about the passion and commitment which underpins everything we do.

We can highlight the growing popularity of our Injury Prevention Day – set up specifically to alert the public to hazards, and thereby avoid needless injury. This campaign is now really well supported by you, our members, by charities and even by some insurers.

This year we will be working even harder with like-minded organisations and charities. Some of them have already worked with us for years on our advisory consumer panel but, as a group of organisations which care passionately about injured people, we want – and plan – to do so much more.

When first preparing for this speech, I had anticipated that at the time of presentation, the UK would no longer be a member of the European Union.

A week is indeed a long time in politics, and we have had a number of these weeks over the past several months.

We will continue to assess the Government's plans, if they can be described as that, for the withdrawal from the EU, and how they affect injured people. At the heart of our thinking and approach is to ensure, insofar as possible, legislation reflecting improving health and safety standards, together with other provisions such as the Motor Directives, set out over the years by the EU, is maintained. We will continue to argue that there should be no slippage from those levels which have made a significant difference to reducing the numbers of people injured or killed, whether at work or elsewhere, as well as providing appropriate access to justice.

We will campaign for an extension of the provisions in the Mesothelioma Act to help other people who suffer asbestos-related diseases, as part of our ongoing commitment to press the case for the establishment of an Employers Liability Insurers Bureau. This has always been on our long-term agenda. It is 73 years since the establishment of the MIB.

The time has long since passed for the equivalent body to be set up to deal with claims of people injured through no fault of their own at work, and unable to recover fair recompense, due to the failure of their employer to take out insurance. As a society we ought to be taking that more seriously, and acknowledging our responsibilities in terms of the Rule of Law.

The challenges will continue.

The MoJ have recently published their consultation document on extending fixed costs even further, with new proposals to widen the type of case, as well as establishing a new process for cases up to £100,000.

We have already spent time, meeting with civil servants, preparing our response and will engage in as constructive, yet scrutinising way as possible.

The pace of reform has been, and continues to be relentless, and we will continue to influence as much as we can.

What we do is really important, for our clients, of course, but also for wider society. At times, we do need to remind ourselves that every day, all of us, can and do make the difference to the lives of people that need our support and help. Let's continue to do that!

Thank you