

**13 October 2017**

Dear Stakeholder,

**A CALL FOR EVIDENCE ON PERSONAL INJURY CLAIMS ARISING FROM  
PACKAGE HOLIDAYS AND RELATED MATTERS**

The Government is concerned about the apparent increase in personal injury claims arising from package holidays, and its potential implications for consumers/holiday makers, tour operators and the holiday industry as a whole. As you may know, we have been liaising with those closely involved with these claims to get a better understanding of the issues.

The Government announced on 9 July 2017 that it is ready to take appropriate action. We have asked the Civil Procedure Rule Committee to consider proposals to amend the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims in order to bring package holiday claims within existing fixed recoverable costs. We have also asked the Civil Justice Council to consider the rules around how low value personal injury claims are handled more generally, with a view to identifying further steps to address the incentives to bring unmeritorious claims, both for gastric illness and more widely. Regulatory action is also needed to deal quickly and effectively with any misconduct by either regulated claims management companies, lawyers, or those who are simply operating completely illegally. The Claims Management Regulation Unit and the Solicitors Regulation Authority are working together to this end.

And, of course, the travel industry itself also has a vital role to play in addressing the issues around package holiday claims. I understand that they are taking steps on this and I would encourage them to continue this work.

The 9 July announcement was the beginning of a process. Attached to this letter are the details of the Call for Evidence, which sets out the Government's proposals with four questions and sub-questions. The evidence we receive will be used to help inform policy decisions in this area and I would be very grateful if you could take the time to consider the issues and respond.

Yours ever

**RT HON DAVID LIDINGTON CBE MP**

## PERSONAL INJURY CLAIMS ARISING FROM PACKAGE HOLIDAYS AND RELATED MATTERS: THE CALL FOR EVIDENCE

1. This Call for Evidence covers the following issues:

- (i) the problem of an apparent substantial increase in the number of low value personal injury (PI) claims for gastric illness (GI) arising from package holidays, many of which appear to be unmeritorious;
- (ii) action the Government proposes to take to control legal costs by extending fixed recoverable costs (FRC) to low value PI claims arising from package holidays;
- (iii) amendments to Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims (EL/PL PAP);
- (iv) issues that we are asking the Civil Justice Council to consider in relation to package holiday low value PI claims other low value PI claims more generally;
- (v) a call for further evidence including data.

2 The purpose of this Call for Evidence is to alert interested parties to these issues and to seek their responses to them. Any submissions should be addressed to Ms Sulekha Jama at [Sulekha.Jama@justice.gov.uk](mailto:Sulekha.Jama@justice.gov.uk) or 102 Petty France, London, SW1H 9AJ by 10 November 2017. Please enter 'Call for Evidence' in the subject heading<sup>1</sup>.

- (i) the problem of an apparent substantial increase in the number of low value personal injury (PI) claims for gastric illness (GI) arising from package holidays, many of which appear to be unmeritorious

3. According to the industry, over recent years the number of claims for GI made by British holidaymakers has increased substantially (by over 700% for some providers). This is costly to defendant tour operators who may then pass these costs on to customers or suppliers who lose out as a result. In addition, there are concerns about potential impact on holidaymakers if overseas hoteliers turn away from British tourists because of the potential associated costs, as well as about wider reputational damage to the UK. It should be noted that despite the increase in the number of claims there appears to be no evidence that the incidence of GI is itself increasing.

4. The marketing, sale and performance of package holidays sold or offered for sale in the United Kingdom are regulated by the Package Travel, Package Holidays and Package Tours Regulations 1992<sup>2</sup> (the Regulations). In particular, the Regulations make the tour operator liable for the proper performance of the obligations under the contract, irrespective of whether such obligations are

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<sup>1</sup> Alternatively, hard copy responses can be sent to: Sulekha Jama, 3.52, Ministry of Justice, 102 Petty France, London, SW1H 9AJ

<sup>2</sup> S.I. 1992/3288, which implemented Council Directive 90/314/EEC on package travel, package holidays, and package tours.

performed by the tour operator, or by another supplier of services such as the hotel. Under the Regulations, the tour operator is liable to the consumer for any damage proved to have been caused to them by the failure to perform the contract or the improper performance of the contract (subject to certain statutory defences). This would include liability for PI arising from negligence in a resort (such as GI arising from food poisoning, or 'slips and trips'). It is, then, relatively straightforward to bring a claim against a tour operator in England and Wales for a PI that occurred during a package holiday abroad.

5. The number of travel organisations that can be sued in this way is likely to increase significantly with the implementation of the revised EU Package Holiday Directive<sup>3</sup> (expected on 1 July 2018) which will extend the concept of "package" by broadening the scope of the Regulations to cover a wider range of travel products and so, in turn, the number of providers, which may include smaller travel agents (as opposed to package organisers).

6. The Government shares the concerns of the UK travel industry about what would appear to be a significant increase in the number of GI claims arising from package holidays. The industry believes that many of these claims are spurious but they are expensive to defend. There are similarities in these claims with the continuing high number and cost of whiplash claims where the Government announced its reform package in February 2017 and confirmed its intention to bring forward measures through the introduction of a Civil Liability Bill, as announced in the Queen's Speech on 21 June.

(ii) action the Government proposes to take to control legal costs by extending fixed recoverable costs (FRC) to low value PI claims arising from package holidays

7. These are personal injury (PI) public liability (PL) claims, generally for food poisoning/gastric illness, which defendants say are often brought two or more years after the holiday in question (the limitation period is three years). They appear to be generally for relatively low damages individually (appearing to range upwards from around £800 per person<sup>4</sup>, but can be combined for families or groups). There is a concern that the claim is easy to make with very little or no evidence, and this can create cost for the travel industry in defending the claim, even if they believe there is no merit in it. A particular concern is that the claimant's legal costs of dealing with these claims (paid by a losing defendant) are not fixed, as they have been since 2013 for other similar claims. This is because the breach of duty occurs outside England and Wales.

8. The Regulations ascribe liability to the tour operator for what occurred abroad. However, as the tour operator is based in England and Wales, it does not seem right that – albeit that the incident itself occurred abroad – that these claims should not be subject to the same fixed costs which would apply to an

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<sup>3</sup> The European Parliament and Council Directive (EU) 2015/2302 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC.

<sup>4</sup> Inferred by the 14<sup>th</sup> Edition of the Judicial College Guidelines for the Assessment of Damages in PI cases

identical claim arising in England and Wales, not least because any extra work, when compared with a similar PI claim arising from an accident or alleged breach of duty occurring in England and Wales, would only fall to defendants who may need to liaise with, or take instructions from, the overseas provider (resort or hotel).

9. Moreover, FRC provide certainty in the amount of costs that a losing party would have to pay and would reduce the financial burden of defending such claims, which is ultimately passed on to the consumer.

10. Extending FRC would be effected by amending the Pre-Action Protocol for 'fast-track' (that is, under £25k damages) Employers' Liability and PL claims (the EL/PL PAP). Although the current concern is around GI claims – and irrespective of the reported disproportionate increase in the volume of GI claims - there would appear to be no justification for not extending FRC to cover all fast track PI PL package holiday claims. In particular, there is a real risk that taking action on GI claims alone could simply result in an unfounded increase in other types of holiday claims.

11. We are therefore proposing to extend the current FRC that apply to PL claims in England and Wales to those arising abroad under the Regulations. Following the Call for Evidence we would hope to be able to finalise any revisions to the EL/PL PAP quickly so that any changes can apply to all new claims from April 2018.

12. This approach is in line with wider Government policy which is to extend FRC where possible in civil litigation. Most, but not all, low value PI claims are now covered by FRC, and other initiatives are in train.

13. Most recently, on 31 July, Lord Justice Jackson published his report on extending FRC much more widely<sup>5</sup>. He recommended<sup>6</sup> that FRC should be extended to cover holiday sickness claims. However, he recommended that the FRC should be at RTA rather than PL rates. That is something that we will consider in any consultation on his wider recommendations, but at this stage we are proposing to fix them at PL rates, as they would be if the incident occurred in England and Wales.

(iii) amendments to Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims (EL/PL PAP)

14. The main proposal is to amend the EL/PL PAP to ensure that it - and so, in turn, the FRC provisions in Part 45 of the Civil Procedure Rules (CPR) - would apply to PI claims where the Regulations are engaged. An amendment to Part 45 would also be required to give effect to this. In addition, some further amendments would be required to reflect what is understood to be current

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<sup>5</sup> *Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs*  
<https://www.judiciary.gov.uk/publications/review-of-civil-litigation-costs-supplemental-report-fixed-recoverable-costs/>

<sup>6</sup> Chapter 5, para 3.2

industry practice when dealing with such claims at the pre-action stage. We consider that amendment to the following provisions, which would only apply to PI claims where the Regulations are engaged, would be required.

**Q.1 We would welcome views on the drafting and effect of these proposed amendments; the use of the EL /PL PAP; and on whether it is considered that any other provisions would require amendment to give effect to what is proposed more generally:**

- (a) paragraph 4.1(1)(a), to specify the date from which claims will be subject to the EL/PL PAP and to include claims other than those arising from “an accident”;
- (b) paragraph 4.3(7), to remove the exception for personal injury arising from an accident or alleged breach of duty occurring outside England and Wales as far as claims under the Regulations are concerned;
- (c) paragraph 6.9, to extend from “the next day” to three days the time within which a defendant must send to the claimant an electronic acknowledgment after receipt of the Claim Notification Form (CNF);
- (d) paragraph 6.10(b), to extend from “the next day” to three days the time within which an insurer must send to the claimant an electronic acknowledgment after its receipt by the insurer;
- (e) paragraph 6.11(b), to extend from 40 days to 120 days the period within which a defendant must complete the response section of the CNF and send to the claimant;
- (f) paragraph 7.32, to extend from 35 days to 70 days the “total consideration period”;
- (g) paragraph 7.50, to extend from 5 days to 10 days the period within which the Court Proceedings Pack must be returned to the claimant with an explanation as to why it does not comply. We understand that, at the pre-action stage, claims for GI in particular are often made under the same holiday booking reference number so may include all members of a holiday party affected. If these claims become subject to the EL/PL PAP, each claimant would be required to make their claim separately and it is intended that communications between the parties would be through the Claims Portal. We invite your submissions with evidence, as to the practicality or appropriateness of this approach.
- (h) GI claims made under the Regulations may include, in the alternative, a claim under the Supply of Goods and Services Act 1992 or, for contracts entered into after 1 October 2015, the Consumer Rights Act 2015. We would want to ensure that these proposals are not undermined by claims being made under these provisions, either in the alternative or as free-

standing claims, and propose that such claims should also be subject to both the EL/PL PAP and, in turn, the relevant FRC. We similarly invite your submissions on this proposal.

- (i) We are also considering the date from which any amendments to the EL/PL PAP should take effect and, in particular, whether that date should be by reference to the date upon which the cause of action accrues or the date that the claim notification form (CNF) is submitted. Previous amendments to the Pre-action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents, for example, have applied to claims by reference to the date of submission of the CNF. We again invite your submissions with evidence, as to the practicality or appropriateness of either approach.

(iv) issues that we are asking the Civil Justice Council to consider in relation to package holiday low value PI claims other low value PI claims more generally

15. There has been considerable concern over recent years about the increase in the number of low value PI claims in different areas of law. These are predominantly in the fast track – between £1,000 and £25,000 damages, although typically in the £2,000-£5,000 damages bracket.

16. We are therefore asking the Civil Justice Council (CJC) to look more widely, both (i) at the rules and procedures for bringing a low value PI package holiday claim, and (ii) at low value PI claims more widely, where in the recent past we have witnessed sharp increases in the volume of successive types of claims, whether whiplash, noise induced hearing loss, or gastric illness, substantially increasing the associated costs of these claims. The CJC is an independent MoJ advisory body, chaired by the Master of the Rolls, and is well placed to give independent advice on these issues.

**Q.2 Are there particular issues that you consider should form part of this work, including for example the nature and timing of evidence (medical or otherwise) needed to support a claim.**

(v) a call for further evidence including data

**Q. 3: We would particularly welcome further data on the volume and associated costs of gastric illness and other personal injury claims arising from package holidays sold by British tour agents. In particular, for recent years (ideally 2010 until now, and more granular if possible):**

- The incidence of gastric illness abroad.
- The volume of package holidays sold by British tour agents.

- The volumes of claims, both GI and wider package holiday PI
- The length of time between incident and notification of defendant, and settlement;
- Legal costs (both claimant and defendant)
- Success rates (including pre-court settlement rates)
- Damages awarded.

**Q4: Do you have any other issues to raise that you consider to be relevant to this Call for Evidence?**

Ministry of Justice  
13 October 2017

**Confidentiality**

17. Information provided in response to this Call for Evidence, including personal information, may be published or disclosed in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

18. If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

19. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Ministry.

20. The Ministry will process your personal data in accordance with the DPA and in the majority of circumstances, this will mean that your personal data will not be disclosed to third parties.

21. Thank you for considering this Call for Evidence. We look forward to receiving your response.