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

A response by the Association of Personal Injury Lawyers

Date: 9 November 2017

The Association of Personal Injury Lawyers (APIL) is a not-for-profit organisation with a history of over 20 years of working to help injured people gain access to justice they need and deserve. We have over 3,500 members committed to supporting the association's aims and all of which sign up to APIL's code of conduct and consumer charter. Membership comprises mostly solicitors, along with barristers, legal executives and academics.

APIL has a long history of liaison with other stakeholders, consumer representatives, governments and devolved assemblies across the UK with a view to achieving the association's aims, which are:

- To promote full and just compensation for all types of personal injury;
- To promote and develop expertise in the practice of personal injury law;
- To promote wider redress for personal injury in the legal system;
- To campaign for improvements in personal injury law;
- To promote safety and alert the public to hazards wherever they arise;
- To provide a communication network for members.

Any enquiries in respect of this response should be addressed, in the first instance, to:

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1. APIL has never condoned the encouragement of exaggerated or bogus claims of any kind. A number of undesirable practices appear to have grown up around the package holiday business and personal injury claims which we hope can be tackled through targeted reforms.

2. But the route to redress should not be compromised, nor should existing cases within the Pre-Action Protocol For Low Value Personal Injury (Employers' Liability And Public Liability) Claims (the EL/PL PAP) be disrupted simply for the convenience of timetabling constraints imposed upon bringing any reforms into force.

3. The problem with the Ministry of Justice's (MoJ) proposals in this consultation is that the 'cure' goes much further than the identified malaise.

4. In particular, the call for evidence identifies the problem which the MoJ seeks to resolve as "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." Despite this limited scope, the proposals in this call for evidence go much further: catching all accident claims which can be brought under the *Package Travel, Package Holidays and Package Tours Regulations 1992* (the 'Package Travel Regulations'), including those involving aviation, marine, multiple claimant and all non-gastric illness claims as well as more serious gastric illnesses caused by E.coli 0157 outbreaks, for example. All of these types of claims are unsuitable to the claims process within the EL/PL PAP, involving variously expert evidence on local standards, claims being brought in the Admiralty Court, complex issues of liability, international Treaties and Conventions and differing limitation periods.

5. If the MoJ seriously intends to deal only with the problem of an apparent substantial increase in the number of low value PI claims for GI arising from package holidays, then it must define exactly what is meant by a gastric illness and ensure that there is a robust list of exemptions from these proposals.

6. In our view, the proposed amendments to the EL/PL PAP are an inadequate solution: far better would be a separate protocol specifically for gastric illness claims brought under the Package Travel Regulations.

7. Never the less, this call for evidence asks for our views on amendments to the EL/PL PAP. Our comments in the sections below are made even though our primary position

is that the inclusion of all package holiday personal injury claims valued at £25,000 or less within the EL/PL PAP is entirely inappropriate.

Consultation questions and answers

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";

APIL comment

9. This amendment to the EL/PL pre-action protocol is far too broad. In our view, this will catch a wide range of claims, not only the additional personal injury claims arising from package holidays as is proposed. It would capture 'non accidental' claims, marine and aviation claims, product liability and strict liability claims, for example.

10. In our view, group, marine, or aviation claims along with those which have a defendant based outside the jurisdiction in particular should be expressly excluded from the PAP. Similarly, claims arising from notifiable disease outbreaks such as E.coli 0157 should also be excluded.[1] These claims often involve complex issues on liability and other evidence; limitation differs from the normal three years; consideration of the Montreal Convention (aviation) and Athens Convention and related protocols (marine) may also be required, all of which make such claims entirely unsuitable for this PAP.

11. Where there are group claims (for example, families or multiple claimants at the same hotel/resort), there are often interlinking liability and causation issues for different claimants within the group. It is often critically important that lawyers and experts on both sides of the claims process have access to information about guests with claims arising at the same or similar times. Dealing with individual claimants within a portal will limit the possibility that this evidence is gathered and considered, to the claim's detriment.

[1] E.coli 0157 infection is a notifiable disease because the illness it causes (bloody diarrhoea which can be complicated by haemolytic uraemic syndrome [HUS]) can be severe or fatal. An outbreak in 2014 struck down 15 people: 13 of them children, of whom four required dialysis and have a life-long risk of renal failure. A variety of sources have been identified for E. coli O157 outbreaks in humans, including foodborne, waterborne, person-to-person spread and animal contact.

(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;

APIL comment

12. This is the more appropriate place to amend paragraph 4 of the Pre-action protocol, but not in the manner suggested here. We suggest that the clause should be amended to read: "*(7) for personal injury arising from an accident or alleged breach of duty occurring outside England and Wales unless the claim is* ***a claim for gastric illness*** *brought under the Package Travel, Package Holidays and Package Tours Regulations 1992";*

13. We appreciate that it will prove difficult to define 'gastric illness', but if this proposal is to be limited to such claims, then a definition will be required.

14. In our members' experience foreign gastric illness claims fall into three categories:

    (a) Claims where there is positive evidence of a bacterial infection such as salmonella or campylobacter. In such claims evidence is needed from a gastroenterologist to confirm the nature of the illness and that, given the timings and by reference to the known illness incubation periods, the likely source is the hotel. These claims are reasonably straightforward.

    (b) Claims where there is no positive evidence of a bacterial infection but there is good evidence that a gastric illness was sustained and of issues at the hotel which are suggestive of failures of food hygiene or other hygiene systems. In these cases evidence is needed from a gastroenterologist as above but evidence is also required from a microbiologist to confirm the likely source of the illness. These cases are more difficult in relation to issues of liability and causation but that does not mean that they are not genuine claims.

    (c) Claims where there is no positive evidence that an illness was sustained and little or no evidence of relevant failures at the hotel. These are the sorts of cases where allegations of fraud are more likely to be made and succeed and which in our view, solicitors are unlikely to take on.

An alternative way to incorporate extended time limits for these claims: APIL comment on the time limit extensions, set out below

15. If, as the MoJ maintains, only the 'relatively straightforward' claims will be included within the PAP, then there should be no need to extend the time limits from just over one month to over two months and four months respectively. There would be no incentive for defendants/insurers to deal with matters quickly.

16. If, however, the scope of the proposals is to extend beyond straightforward gastric illness claims, as discussed above, then extra time is required. However, we do not think that this PAP is a suitable vehicle for non-GI claims.

17. There is a better drafting solution available to the MoJ than the one proposed in this consultation: in the existing Pre-Action Protocol For Low Value Personal Injury Claims In Road Traffic Accidents (the RTA PAP), claims brought against the Motor Insurer's Bureau (MIB) have alternative time limits. See for example paragraph 6.13 of the RTA PAP where the MIB has additional time to respond to the CNF.

18. Where GI claims are made under the Package Travel Regulations, then alternative time limits could be applied in a similar fashion, without affecting EL and PL claims.

19. APIL has specific comments on each paragraph, below, but the comments made here are made within the context of our view that the EL/PL PAP and portal are entirely unsuitable for non-GI Package Tour Regulations claims.

(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;

APIL comment

20. The MoJ should note that the majority of these cases will be dealt with by tour operators directly, not insurers. Amendments to the PAP must reflect this different claims handling

environment, which includes defendant tour operators and bond providers.

21. At present the PAP provides for an automatic acknowledgment of the CNF by the defendant insurer: there is no remedy for failure for a defendant to send an acknowledgement in accordance with 6.9, but similarly, it is a check to ensure that the CNF has been received.

22. The short increases in time scales may, perhaps, be appropriate where the defendant is acting in person (i.e. unrepresented) but there is absolutely no need for the extension of time where the claim is submitted to an insurer or tour operator directly, as is the case in the PAP.

23. There is no explanation within the consultation paper as to why these times have been amended.

24. In relation to 6.10(b) as already indicated for 6.9, the additional time may be appropriate where the defendant is acting in person, but there is no need where the defendant's claim is being dealt with by an insurer or, as will be the case for these claims, a tour operator with significant resources to deal with such claims.

25. This will simply create further defendant delay. The defendant insurer/tour operator does not have to provide its details at this point in the process (address, email, reference) so the defendant remains untraceable and/or unaccountable and, under this proposal, will continue to do so for a longer period of time.

(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;

APIL comment

26. This amendment proposes to extend the time limits for all public liability claims under the protocol. We can see no explanation for delaying the resolution of all claims made, not solely those which are made under the Package Travel Regulations.

27. One of the advantages of conducting claims under this particular PAP is that the time limits encourage defendants to respond promptly, claims are dealt with quickly if they stay within the protocol.

28. One of the problems outside of the PAP is delay in EL and PL claims. This proposal will

introduce unnecessary delay for these claims.

29. APIL members' reports of their claims experience under the Package Travel Regulations are that an admission of liability within the protocol period is made in very few claims at all (several members indicate that only a tiny proportion of their cases will receive an admission of liability within the protocol period). If such conditions continue, then the majority of such claims would leave the PAP in any event.

(f) paragraph 7.32, to extend from 35 days to 70 days the "total consideration period";

APIL comment

30. This amendment proposes to extend the consideration period time limit for all claims under the protocol. We can see no explanation for delaying the resolution of all claims made, not just those which are made under the Package Travel Regulations.

31. As we have indicated above, one of the major advantages of conducting claims under this particular PAP is that the time limits encourage defendants to respond promptly and claims are dealt with quickly if they stay within the protocol. One of the problems outside of the PAP is delay.

32. There would be no incentive for defendants/insurers to deal with matters quickly and claimants would be left hanging on for a final resolution of the claim.

(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.

APIL comment

33. This proposed amendment will only serve to slow down the efficiency of the overall process. EL and PL claims do not require this extra time to return the Court proceedings pack, yet this amendment would affect those claims, as well as Package Tour Regulations claims.

34. This amendment is not necessary for gastric illness claims brought under the Regulations because the defendant should be able to assess whether a Court Proceedings Pack is compliant in a similar time frame to that presently required by the Civil Procedure Rules (CPR).

35. If claims are to be brought within the EL/PL PAP then each claimant will have to submit an individual CNF. Any cases involving a group of claimants (and the number required to form a group will need to be specified) should be excluded from the PAP, otherwise at this stage, matter will become confusing for all concerned. Tour operators currently deal with multiple claims (such as families, for example) far more efficiently as a single group: there are often interlinking liability and causational issues for different claimants within a group, which would make it difficult to settle claims individually at this stage.

36. See case studies 1 and 2 at pages 15-18 of this response for examples of group claims.

(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.

APIL comment

37. This proposal to include any goods and services contract or consumer rights contract to illness claims is too broad and runs the risk of capturing all contractual claims, regardless of origin. Note that it should be The Supply of Goods & Service Act 1982 (the call for evidence suggests it is 1992, but this is an error). We understand why it has

been included, following the decision in *Wood v Tui Travel Plc t/a First Choice*[2] but this amendment would also catch car hire claims, foreign slip and trips and unsatisfactory hotel accommodation: they would all fall under the Consumer Rights Act umbrella and claims brought against the insurer of a foreign defendant in accordance with ***the Brussels Regime***.

The Brussels Regime in a nutshell:

38. The main Regulations in use for travel claims which form the Brussels Regime are as follows:

39. The Brussels Recast Regulation,[3] which deals with jurisdiction, the Rome II Regulations,[4] which deal with applicable law for tort claims and the Rome I Regulations[5] which deal with applicable law for contract claims.

40. Rome II essentially states that the applicable law in an accident case is that of the country of accident.

41. Rome I essentially states that unless there is a specific jurisdiction clause in the contract, then the law applicable for breach of contract is that **of the place of performance of the contract** (ie the country in which the claimant is on holiday).

42. So, if the claimant stays in a foreign hotel and has a contractual breach claim against the hotel (because he or she booked via booking.com for instance) or a tort claim, the claimant will then be subject to foreign law a lot of the time (unless it is a Package Travel claim against the UK defendant). Claimants may well also want to cite the Consumer Rights Act 2015 as an add-on if they were in England when the booking was made, but essentially, the contract is with the hotel in the overseas jurisdiction.

43. The Brussels Recast Regulation seeks to facilitate access to justice, in particular by providing the rules on the jurisdiction of the courts and the rules on a rapid and simple recognition and enforcement of judgments in civil and commercial matters given in all EU Member States.

[2] [2017] EWCA Civ 11
[3] (Regulation 1215/2012)
[4] Regulation (EC) No 864/2007 of the European Parliament and of the Council on the law applicable to non-contractual obligations (Rome II), dated 11 July 2007

[5] Regulation (EC) No 593/2008 of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I), dated 17 June 2008

44. Simply, the Brussels Recast Regulation provides special rules for insurance, consumer and employment contracts which may permit the "weaker party" to these contracts – i.e. insurance policy holders, consumers and employees – to sue in their state of domicile.

45. For example, if a hotel is booked via the online site *booking.com* or any similar website and then the claimant slices his or her foot open because of a broken tile in the swimming pool, this is not a Package Travel Regulations claim, but there may be a contractual claim against the hotel or facility and that claim may be brought in England or Wales.

46. In addition, if an insurer is located in England and Wales, then (i) under the case of *Odenbreit* and if (ii) in the country of accident there is enacted a direct right of action against an insurer (as there is in Spain and France for instance), the claimant could also sue the insurer here in England rather than suing the hotel.[6], [7]

47. The proposals as currently laid out in the call for evidence would catch all of these sorts of claims, which, we suspect, is not the MoJ's intention.

(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.

APIL comment

48. We suggest that the date of submission of the CNF is the most appropriate date from which any amendments should take place. The MoJ should take care to ensure that implementation does not render its proposals retrospective in effect.

[6] *FBTO Schadeverzekeringen NV v Odenbreit* (C463/06) [2007] permits an injured claimant to bring a claim against the wrongdoer's insurer in the court of the claimant's domicile. The right is subject to two conditions. (1) the insurer being sued must be domiciled in a Member State of the EU. (2) the direct action against the insurer must be permitted by the national law.

[7] **Interaction with Supply of Goods etc Act 1982 and Consumer Rights Act:** The Supply of Goods & Service Act 1982 (the call for evidence suggests the Act is dated1992, but this is an error) applies to contracts entered into before 1 October 2015. This has been replaced by the Consumer Rights Act 2015 which gives rights to consumers where something goes wrong with a service for which the consumer has paid. The Consumer Rights Act in England and Wales implements the European Directive: each European country should have the same or similar provisions as those contained in Chapter 4 of part 1 which applies to contracts to supply a service. Any misleading statements made by the trader can now become a contractual term, so a consumer is entitled to raise a breach of contract claim. Damages are based on what the consumer's position would have been had the contract been performed.

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. A call for further evidence including data.

APIL comment

49. There are numerous aspects to conducting non-GI related litigation for personal injury claimants where there is an international element to the claim, including claims made for illness or injury sustained whilst on package holidays abroad. Such aspects make these non-GI claims unsuitable for the portal type process or the PAP. Our comments below are based on the premise that the MoJ's proposals will continue to include non-gastric illness claims (as currently drafted) although we take the view that such claims are completely unsuitable for the proposed EL/PL PAP:

Expert evidence and witness evidence

a. The involvement of local lawyers - even at the early pre issue stage. In particular, for advice on local standards which are of critical importance in determining liability under the Package Travel Regulations;

b. Involvement of foreign lay and expert witnesses (an expert witness on local standards is required in all package travel cases) with attendant costs of obtaining expert evidence and translation of the same. In illness cases expert evidence is also often required from a microbiologist and a health and hygiene expert to deal with issues relating to causation and whether there has been a breakdown in health and hygiene standards;

c. In addition, there are significant causation differences between illness pathogen types. For example a claim where a confirmed medical pathogen has been identified such as salmonella will involve consideration of the standards of hygiene in operation at the hotel in relation to food. In contrast, a claim involving a confirmed case of cryptosporidium may involve consideration of the health and hygiene issues relating to the swimming pool at a particular resort. Quite often group claims arise involving a number of different identifiable pathogens and therefore differing investigations will need to be carried out. At the same time, claims often share common generic issues and evidence including the incidence of illness at a particular hotel during the relevant period, the incidence of illness and quality complaints, the performance of hotels against internal and/or external health, hygiene and safety audits etc.;

d. In the majority of both accident and illness claims claimants' medical evidence is disputed and defendants almost always obtain their own medical reports;

e. Other illnesses arise from the package holiday outside of gastric illness e.g. rheumatology complaints, chronic fatigue, and psychological issues (for example) which require evidence on causation, condition and prognosis from relevant experts;

f. The added cost and delay associated with obtaining documents from abroad, e.g., medical records;

g. The added cost and delay of tracing and interviewing witnesses from abroad;

Counsel

h. Increased involvement of counsel - this work is usually complex and counsel is invariably more involved than would otherwise be the case in other more routine case types, for example, drafting pleadings and attending at interlocutory hearings;

Specialised cases

i. Any claim involving injury or illness sustained on a cruise must be brought in the Admiralty Court. In terms of aviation and product liability claims complex evidence is often required in relation to liability issues and limitation will differ from the standard three-year period;

j. Multiple defendants: in Package Travel Regulations cases there are often Part 20 defendants;

k. Claims for illness often arise from an outbreak where multiple claimants suffer illness from the same source or from multiple sources within the same hotel or cruise ship. These claims are best pursued as group actions. Group sizes alter as often clients instruct lawyers at varying times. Often there are shared liability and causational issues for different claimants within a group. It is important that lawyers and experts have access to information about guests with claims arising at the same or similar times. Dealing with individual claims within a portal will reduce the ability for this evidence to be gathered and considered. There is also a need for such cases to be sensibly tried together, rather than dealt with individually within the EL/PL PAP and portal. See case studies 1 and 2 on pages 15-18 of this response by way of example;

l. In addition to damages for pain, suffering and loss of amenity and items of special damage and loss, successful claimants in Package Travel Regulations cases are almost always entitled to damages for loss of enjoyment of their holidays as well as diminution in value of their holidays. Whilst some claimants may be seeking damages in relation to all of the above heads of damage some will only be claiming loss of enjoyment and diminution in value;

m. These claims for loss of enjoyment and diminution in value are often determined by reference to the extent and duration of their illness, meaning that these claims need to be pursued together.

Other considerations

n. In the majority of these cases liability is denied. Admissions by tour operators, when given are rarely full admissions. Our members tell us that only a tiny proportion of their client's illness cases arising from package travel holidays abroad have received full admissions of liability which would fall within the current portal process. Unless tour operator behaviour alters, the EL/PL PAP and portal are likely to be of little use in resolving the vast majority of claims;

o. Cases are disclosure heavy and litigation is often necessary. There is often a need for interlocutory applications including to enforce disclosure. It is relatively common for there to be a pre-action disclosure application;

p. A site visit overseas by experts is often necessary to establish liability issues;

q. Translation costs: for medical records, witness statements, hotel records are usually needed.

Trial

r. Increased trial costs - again the involvement of foreign and lay expert witnesses, interpreters, video link facilities, increased length of trials caused by involvement of additional expert witnesses/translation for foreign witnesses, etc.;

s. The EL/PL PAP and portal are only intended for liability admitted cases, so if liability is not admitted the case comes out of the process.

t. As liability is not admitted in the overwhelming number of cases, any fixed costs which are introduced will need to take account of the additional work necessary to conclude claims including dealing with what is often significant disclosure from defendants (or related third parties), a significant amount of contested expert evidence (including advice on foreign standards from lawyers in the jurisdiction where an accident or illness occurred), significant preparation and correspondence which it is believed will often exceed that necessary in a "typical" EL or PL case and attendance at trial by foreign expert and lay clients, interpreters, video links, extended trial times.

Case study examples of the complexities involved in such cases:

Case Study 1

This case study highlights

- A group gastric illness claim;
- The need to group claims together where the varying degrees of claim rely upon the 'group' evidence;
- The types of expert evidence needed in these types of claims;
- The effect of a complete denial of liability by the tour operator: this case ran to trial and lasted much longer than it ought.

A family of five claimants pursuing a claim for illness and breach of contract following an all-inclusive holiday to the Dominican Republic.

Liability was denied in full throughout the claim.

The claimants made offers both in relation to liability and quantum.

Expert liability and causational evidence in relation to a number of disciplines was obtained to include microbiological evidence, health and hygiene evidence, evidence from a local lawyer and gastroenterological evidence. The defendant also relied upon expert evidence in the fields of microbiology and health and hygiene.

The claim for one of the claimants was additionally complicated because as a result of the gastric illness she had fainted and hit her face on the toilet causing a four inch gash to her head and badly injuring her mouth and teeth: a dental report was also required.

The defendant sought to put forward seven alternative causes for the illness suffered to support their denial of liability. These had to be considered by the experts and ultimately by the court at trial and discounted accordingly.

The five claimants were successful at trial (four day trial and half a day of submissions) and were awarded damages totalling £39,742.

Case Study 2

This case study highlights:

- A group claim where multiple claimants from the same resort suffered gastric illnesses;
- Complete denial of liability and incomplete disclosure by the defendant even though claimants had made early offers to settle which were not taken up by the defendants;
- Ten-day trial;
- Expert evidence required;
- Unsuitability for the EL/PL PAP and portal as currently proposed. These claims would drop out of the portal in any event, but the current broad drafting proposed by the MoJ would catch them initially, due to their individual values, forcing them into an unsuitable procedure at the outset.

More than 50 individuals who had stayed at a hotel in Majorca suffered incidences of unconfirmed gastric illness, cases of confirmed Cryptosporidium poisoning and confirmed cases of Salmonella poisoning.

The six-month protocol period expired with no response on liability having been received and it was necessary to chase to obtain a response.

Initially, liability was denied in full.

Liability and quantum offers were made by the claimants pre-issue, but these were not accepted and it was necessary to issue proceedings.

The claims proceeded by way of ‘lead cases’ (where a number of test cases from the

group are selected to represent and determine the issues in dispute in relation to liability and causation).

It was necessary to obtain expert evidence from a Spanish lawyer in relation to local standards. Expert evidence was also required from, a microbiologist, a pool expert and gastroenterologists in relation to illness. Experts had to consider a range of issues including liability matters relating to the storage, preparation and provision of foodstuffs and the adequacy of the swimming pool plant and pool management and hygiene.

Both parties relied upon significant expert evidence and another (not uncommon issue) was for the microbiologists to determine which of the two pathogens the undiagnosed gastric illness had affected the clients.

A specific disclosure application had to be made as the defendant failed to provide full and proper disclosure. By the time of trial, there was a significant volume of documentary evidence disclosed by the defendant.

The case proceeded to a ten day trial at the end of which judgment was given in the claimants' favour.

Some of the cases within this group would have fallen into the fast track had they been dealt with in isolation. They and others with claims values falling outside the fast track would not have had access to the same liability or causation evidence (including patterns of illness, lay witness evidence including accounts of hygiene standards etc.) from other members of the group action had they been dealt with under the EL/PL PAP. The more limited evidence may also have meant that microbiologists and other experts may have had less evidence to consider. A very different outcome may have been achieved, reinforcing the need for group claims to be expressly excluded from the EL/PAP PAP.

Case Study 3

This case study highlights:

- An example of the non-gastric illness claims which will be caught by the current wide drafting contained in the MoJ's proposals;

- The nature of expert evidence involved in such claims;
- Use of local lawyers, local standards;
- Unsuitability for the EL/PL PAP.

This was a package holiday claim which arose when the claimant was electrocuted while walking along a jetty in the Maldives.

Liability was denied (outside of the personal injury pre-action protocol period) but initially no disclosure was provided to support that denial.

This was a complex case in relation to liability. It concerned local standards in the Maldives and technical electrical issues. It also touched upon local laws and the existence of a general duty to inspect and maintain. It was necessary to obtain expert evidence from a technical expert as well as a Maldivian lawyer.

Proceedings were issued and directions were put in place for the management of the case to trial which included a significant amount of time involved in finalising Maldivian evidence from an electrician and evidence from a local lawyer. Weather reports from previous years also had to be obtained.

An initial offer was put forward by the claimant early in the case, before proceedings were issued. No response or counter offer was received. Further offers were made by the claimant in the course of the case, after proceedings were issued.

The defendant maintained its denial of liability and the case proceeded to trial.

The claimant was successful at trial and was awarded in damages excess of her own Part 36 offer.

Although this case was listed for a one-day trial, the case was only part heard due to lack of time. Judgment was reserved and given at a later date after the parties were ordered to file skeleton arguments.

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.

APIL comment

Unfortunately the short timescales for this consultation response, published on 13th October with a return date of 10th November 2017 (20 working days excluding the publication date of the call for evidence) made it difficult for data to be obtained. APIL put out a call to its members for data, but the data sets obtained within the response period were too small to produce a reliable result.

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

APIL comment

50. The MoJ has already indicated that it intends to increase the small claims limit for personal injury claims from £1,000 to £2,000.

51. Our members tell us that the majority of straightforward Package Tour Regulations GI claims are valued at just under £2,000.

52. In our view, the MoJ is likely to achieve its aim of reducing the number of perceived unmeritorious package holiday GI claims with the implementation of the increased small claims limit.

53. We recommend that any changes to the EL/PL PAP and portal or the creation of a bespoke PAP for these GI claims should be deferred until the MoJ and the travel industry have monitored the effects of an increased small claims limit up claim volumes and the level of perceived 'unmeritorious' claims.