

APIL ACCIDENTS ABROAD CONFERENCE: 16<sup>th</sup> April 2020



## COVID-19: THE IMPACT ON TRAVEL CLAIMS AND LITIGATION

Sarah Prager  
Dominique Smith  
Barristers, 1 Chancery Lane

April 2020

### The amendments to the CPR



#### The voluntary extension to the Personal Injury Pre-Action Protocol

- Limitation dates are frozen.
- Claimants' solicitors will respond constructively to requests for extensions of time for service of a Defence.
- Supported by an escalation process.

The extension expressly states that it will come to an end on 20<sup>th</sup> April; but this period is likely to be extended.

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## The amendments to the CPR

### The new Practice Direction 51ZA

- Came into force on 2<sup>nd</sup> April.
- Extensions of time can now be agreed for 56 and not 28 days without reverting to the court.
- Judges will take the pandemic into account when considering applications for relief from sanctions, extensions and adjournments.

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## The amendments to the CPR

### The new Practice Direction 51ZA

- Foreign Defendants such as insurers in road traffic and other claims directly made against insurers.
- Foreign suppliers in package and other similar claims.
- Where the solicitor himself is unwell.

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## County Court hearings

### Priority 1 hearings: work that must be done

- Committals.
- Freezing orders.
- Injunctions.
- Applications in cases listed for trial in the next three months.
- Applications where there is a substantial hearing in the next month.
- Multitrack hearings where the parties agree the matter is urgent.
- Appeals in these instances.

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## County Court hearings

### Priority 2 hearings: work that could be done

- Infant and protected party approvals.
- Applications for interim payments.
- Stage 3 assessment of damages.
- Applications to set aside judgment in default.
- Small claims and fast track trials where the parties agree the matter is urgent.
- Preliminary assessment of costs.
- Appeals in these instances.

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## Assessing whether matters are suitable for remote hearings

### Factors to take into account:

- The nature of the hearing.
- The urgency of the matter to be addressed at the hearing.
- The number of parties participating.
- Whether some or all of the parties have access to the necessary technology.
- Whether expert evidence is necessary - many microbiologists are unavailable at the moment, for obvious reasons, as are many medical doctors.

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## Conducting remote hearings

### The technology

- Skype.
- Zoom.
- Telephone.
- Email.

### Hearing bundles

- Keep bundles short.
- Filing bundles.

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## The litigation

### The Canadian airlines claims

- A class action has been brought against four Canadian airlines.
- In mid March the Canadian government advised against non-essential travel.
- The Claimants' flights were cancelled, and they were offered rebooking but not a refund. They seek a full refund.
- The airlines defend the claims on the basis of force majeure.

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## The litigation

### The Ischgl claims

- A group action has been brought against the Tyrolean ski resort of Ischgl.
- Over 2,500 skiers have joined the action to date, about 80% of them German.
- The Claimants assert that the local authorities in Ischgl failed to act to close the resort even though they were aware that a bar employee had tested positive for Covid-19. He became a 'super-spreader'.

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## The litigation

### The Jeju claim

- The South Korean island of Jeju is suing two tourists for travelling to the island when one of them had been advised to observe quarantine.
- One of the travellers exhibited symptoms a day after arriving; they remained on the island for a further four days.
- They came into contact with 47 individuals at 20 locations.
- The proceedings are brought by the Province and some of the individuals and businesses.

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## The litigation

### The cruise claims: Miami

- A class action is being brought against Costa Cruises in Miami.
- The Claimants allege negligence against the cruise operator in allowing a cruise aboard the Costa Luminosa to take place and continue, even though some passengers were showing symptoms of Covid-19.

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## The litigation

### The cruise claims: California

- An American couple is suing Princess Cruises in California.
- The cruise operator allowed a cruise aboard the Grand Princess to continue even though there had been an outbreak of illness on the antecedent cruise.
- The couple alleges gross negligence in failing to provide them with information, to clean the ship adequately, or to screen passengers.

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## The litigation

### The cruise claims: Australia

- A class action is afoot against Princess Cruises in Australia.
- Some 400 passengers aboard the Ruby Princess contracted the virus on one cruise.
- Allegations are also made about the port authorities' handling of disembarkation and dispersal of passengers.
- A further 700 passengers were involved in an outbreak aboard the Diamond Princess in a separate incident.

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## The litigation

### Future claims

- Airlines and tour operators: refunds.
- Airlines, tour operators and cruise operators: personal injury claims.
- British resorts and hotels.
- Foreign resorts and hotels.
- Clinical negligence claims: the NHS.
- Clinical negligence claims: foreign hospitals.
- Employers' liability: British employers.
- Employers' liability: foreign employers.

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Sarah Prager  
1 Chancery Lane  
[sprager@1chancerylane.com](mailto:sprager@1chancerylane.com)  
Dominique Smith  
[dsmith@1chancerylane.com](mailto:dsmith@1chancerylane.com)

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