



**A call for evidence from The Ministry of Justice on personal injury claims  
arising from package holidays and related matters**

**A response by  
The Chartered Institute of Legal Executives**

**November 2017**



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## **1. Introduction**

- 1.1. The Chartered Institute of Legal Executives (CILEx) is the professional association and governing body for Chartered Legal Executive lawyers, other legal practitioners and paralegals. CILEx represents around 20,000 members, which includes:
  - 1.1.1. Approximately 7,500 fully qualified Chartered Legal Executive lawyers.
  - 1.1.2. Approximately 3,700 members of all grades who work in personal injury, for both claimants and defendants.
- 1.2. CILEx continually engages in the process of policy and law reform. At the heart of this engagement is public interest, as well as that of the profession. Given the unique role played by Chartered Legal Executives, CILEx considers itself uniquely placed to inform policy and law reform.
- 1.3. As it contributes to policy and law reform, CILEx endeavours to ensure relevant regard is given to equality and human rights, and the need to ensure justice is accessible for those who seek it.
- 1.4. This response includes contributions from some of CILEx's civil practitioners and members working in personal injury. CILEx liaised with members through its Personal Injury Specialist Reference Group, and its Civil Practitioners Specialist Reference Group, and conducted a survey of members into their experience of low value personal injury (PI) claims arising from package holidays. These are expanded in more detail below.

## 2. General Points

### Impact of the reported increase in the number of claims for gastric illness (GI) arising from package holidays on CILEx members

2.1. In order to establish to what extent the claim that over recent years, “the number of claims for GI made by British holidaymakers has increased substantially (by over 700% for some providers),”<sup>1</sup> and in the absence of any evidence provided, is reflected among our members’ and practitioners’ experience, CILEx asked respondents to indicate whether the number of GI cases that they had dealt with had increased or decreased over the last year:

- 63% of respondents indicated that the number of GI cases they have dealt with, compared with this time last year, have neither increased nor decreased.
- 21% of respondents indicated that they have experienced a small increase in the number of GI cases they have dealt with, compared with this time last year.
- 11% of respondents indicated that the number of GI cases they have dealt with, compared with this time last year, have significantly increased.
- 5% of respondents indicated that they have experienced a small decrease in the number of GI cases they have dealt with, compared with this time last year.

2.2. Just under one-third (32%) of respondents indicated that they had experienced a small or significant increase in the number of GI cases they have dealt with compared with this time last year. In fact, the most significant proportion of members indicated that they had experienced no change at all (63%).

2.2.1. CILEx would be cautious in suggesting that the figures and experiences provided above are reflected similarly across all of our personal injury lawyers and civil practitioners, however they are useful in assessing the extent to which respondents

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<sup>1</sup> Paragraph 3 of the call for evidence document.

## Is reform necessary?

2.3. Over half of respondents (53%) agreed or strongly agreed that reform is necessary in addressing the issues associated with the reported increase in low value PI claims arising from package holidays. A smaller proportion of respondents (26%) neither agreed nor disagreed, and the remaining 21% disagreed or strongly disagreed.

## Proposal to extend the current fixed recoverable costs (FRC) that apply to public liability (PL) claims in England and Wales to those arising abroad under the Package Travel, Package Holidays and Package Tours Regulations 1992.

- 2.4. 53% of respondents agreed or strongly agreed that the current FRC scheme that applies to PL claims in England and Wales should be extended to GI and low value PI claims arising abroad under the Package Travel, Package Holidays and Package Tours Regulations 1992. Respondents commented that, in cases where the claims are similar in nature in terms of how the claim is handled, and what type and extent of evidence is required to prove the claim, then an FRC scheme could suitably apply to these cases, providing the cases are appropriate.
- 2.5. In order to be appropriate, it is important to consider the complexity of a claim. In cases where a claim is considerably straightforward, or if a lower level of expertise is required, then an FRC scheme could prove effective.
- 2.6. However, a significant number of respondents who disagreed or strongly disagreed with extending FRCs that apply to public liability (PL) claims in England and Wales to those arising abroad under the Package Travel, Package Holidays and Package Tours Regulations 1992, commented that in a majority of cases, a significant amount of expertise is often required, including claims that often require microbiologists and other experts to support claims of GI.<sup>2</sup>

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<sup>2</sup> A respondent said: "The law in these cases as it currently stands places the burden on the Claimant of adducing expert evidence of the local (i.e. foreign) standard that has been breached and proving that the breach of this local standard has caused the damage suffered. Failure by the Claimant to adduce such expert evidence proving the local standard and the breach will ordinarily result in the claim falling at the first hurdle. See the cases of: *Wilson v Best Travel Ltd* [1993] 1 All ER 353 and *First Choice Holidays and Flights Ltd v Holden* [2006] EWHC 3775. From my experience, firstly, it is often very difficult and requires a lot of time to identify a suitable local standards expert. Secondly, the cost of obtaining such expert evidence is usually very high as it can involve complex matters of local law and standards, even in cases of low value. The local standard that may have been breached is not necessarily cheaper to obtain evidence of just because the injury

- 2.6.1. CILEx is concerned that the introduction of a FRC model would likely fail to take into account the complex nature of GI claims arising from package holidays abroad, and could unfairly punish claimants as a result of a significant depreciation in the legal costs they will be able to reclaim.
- 2.6.2. As a consequence, CILEx believes that extending the current fixed recoverable costs (FRC) that apply to public liability (PL) claims in England and Wales to those arising abroad under the Package Travel, Package Holidays and Package Tours Regulations 1992 would likely result in genuine claimants being deprived from accessing justice and receiving the compensation they deserve.
- 2.7. Respondents also highlighted that the role of claims management companies should be of consideration when tackling issues associated with the reported rise in the number of low value PI claims arising from package holidays.
- 2.7.1. CILEx has previously expressed with the Ministry of Justice<sup>3</sup> the need to protect genuine claimants. In order to do this however, CILEx recommends that the Ministry of Justice consider clamping down on cold-calling.<sup>4</sup>
- 2.8. A larger proportion of respondents (53%) disagreed or strongly disagreed with the proposal that the current FRCs that apply to road traffic accident claims in England and Wales should be extended to PI claims arising abroad under the Package Travel, Package Holidays and Package Tours Regulations 1992.

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suffered is less serious. Thirdly, obtaining such local standards expert evidence will often involve instructing a foreign expert based abroad and will therefore involve translation and interpreting costs, as the local standards expert often does not speak and/or write English, or if they do not necessarily to a sufficiently high enough standard to prepare a written report in English and to give evidence at trial under cross examination. Often, the local standards expert is not conversant with the requirements of the Civil Procedure Rules and this will have to be explained in detail to the expert to ensure a CPR-compliant report is obtained, thereby increasing costs. It is often the case that relevant witnesses might be foreign and/or based abroad and again not necessarily have English as their mother tongue, or be sufficiently fluent to provide a witness statement in English, meaning the cost of obtaining witness statements from them will be higher as this will involve translating and interpreter costs. Also, it can be difficult and costly getting disclosure of relevant documents from tour operator Defendants, as they will often say that relevant documents are not in their possession or control, as they belong to the hotel etcetera where the tortious event occurred. It is my experience that claims against tour operators, including those of modest value, tend to be much [costlier] to run than an equivalent "slipping and tripping" type EL/PL claim that occurs in England and Wales for example."

Another respondent said: "Holiday illness claims require a much more significant amount of evidence to be gathered in order to be successful, as well as a greater deal to prove following the *Wood v TUI* case"

<sup>3</sup> Paragraph 3.9 – 3.9.2 of *Reforming the Soft Tissue Injury ('whiplash') Claims Process, A response by The Chartered Institute of Legal Executives*.

[http://www.cilex.org.uk/~media/pdf\\_documents/main\\_cilex/policy\\_and\\_governance/consultation\\_responses/cilex\\_submission\\_reforming\\_the\\_soft\\_tissue\\_injury\\_whiplash\\_claims\\_process\\_final.pdf?la=en](http://www.cilex.org.uk/~media/pdf_documents/main_cilex/policy_and_governance/consultation_responses/cilex_submission_reforming_the_soft_tissue_injury_whiplash_claims_process_final.pdf?la=en)

<sup>4</sup> See paragraph 4.3 for further discussion)

2.8.1. Respondents cited the same concerns as highlighted previously (see paragraphs 2.6 – 2.7.1). As a result, CILEx is again cautious of extending the use of FRC, and would reiterate its previous recommendations that the Ministry of Justice consider the impact this proposal would likely have on the amount of legal costs genuine claimants will be able to recoup, the ability of genuine claimants to access justice, and the role claims management companies and cold-calling play in personal injury law.

2.9. In addition to previous recommendation made on this topic, CILEx would welcome additional consideration and consultation on whether extending FRC is the best option for tackling the issues associated with the reported rise in the number of low value PI claims arising from package holidays,

**3. Question 1: We would welcome views on the drafting and effect of these proposed amendments; the use of the Pre-Action Protocol for Low Value Personal Injury (Employers' Liability and Public Liability) Claims (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";**

3.1. On balance, respondents were reticent in agreeing with the Government's proposed amendment to paragraph 4.1(1)(a) of the EL/PL PAP, which would specify the date from which claims will be subject to the EL/PL PAP and would include claims other than those arising from an "accident". Although 27% of respondents agreed with the Government's proposal, 40% disagreed or strongly disagreed, with the remainder of respondents indicating that they neither agreed nor disagreed.

3.1.1. A significant proportion of respondents highlighted concerns regarding the use of the phrase "to include claims other than those arising from an "accident"." It was emphasised that extending the subject claims of

the EL/PL PAP to include all claims other than those arising from an accident would not only include GI claims, but disease claims also.<sup>5</sup>

3.1.2. This is of significance since this is not, as CILEx understands, the predominant focus of the Ministry of Justice's call for evidence. The use of this phrasing therefore embraces all disease claims arising abroad on package holidays, which can often prove more complex when compared to GI claims according to some respondents.<sup>6</sup>

3.2. Although a small proportion of respondents agreed with the proposed amendment to paragraph 4.1(1)(a), CILEx is concerned that the proposed amendment could lead to claims other than GI claims arising from package holidays abroad, being included in the FRC scheme proposed in this call for evidence. At the time of writing, we are currently unaware of a substantial increase in the number of disease claims or other low value PI claims resulting from package holidays abroad, and as a result, we are not aware that any action must be taken on these claims.

3.3. CILEx would therefore ask that additional consideration and consultation be carried out in order to ensure that any amendments to the EL/PL PAP refrain from including claims other than GI claims. However, if the Ministry of Justice intends to include a wider variety of claims, including disease claims, then CILEx would welcome additional consultation and explanation as to why claims other than GI claims are included as part of these proposed reforms.

**(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;**

3.4. 40% of respondents agreed with the Government's proposed amendment to paragraph 4.3 of the EL/PL PAP, which would remove the exception for

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<sup>5</sup> A respondent said: "I think the wording should specifically state that it is amended to include package holiday cases involving GI conditions, rather than simply situations other than "accidents" as this amended wording could then encompass other cases that are not intended to be captured by the amendment. I am also not convinced that non-GI package holiday claims should be captured by the EL/PL PAP due to the additional complications involved in such cases i.e. obtaining evidence of local standards etc"

Another respondent said: "I am uncertain regarding the inclusion of claims other than those arising from an accident. I think further explanation needs to be given about the proposals before the possible implications can be considered fully." Another respondent said: "I assume this means that they propose to apply fixed costs to disease claims? If so that is completely inappropriate."

<sup>6</sup> A respondent said: "Disease claims are much more difficult and time-consuming in terms of proving exposure, establishing causation and obtaining supportive expert liability evidence. That cannot be done in the costs regime for accident claims and I am amazed that they would consider that in any way reasonable."



personal injury arising from an accident or alleged breach of duty occurring outside England and Wales as far as claims under the Regulations<sup>7</sup> are concerned, while 47% disagreed or strongly disagreed.

3.4.1. In order to ensure that the proposed FRC scheme works effectively, the proposed amendment to paragraph 4.3(7) of the EL/PL PAP would likely help to ensure that if an injured party is from England or Wales, and the package holiday contract that they signed originated in England or Wales, then they will be able to bring their claim to proceedings in England or Wales even if the injury occurred outside this jurisdiction.

3.4.1.1. This would help ensure that individuals will be able to have access to justice in circumstances that can often prove very stressful.

3.4.2. However, as with the proposed amendment to paragraph 4.1(1)(a) of the EL/PL PAP, respondents expressed their concerns with the terminology used and its potential impact on claims other than GI claims arising from package holidays. Respondents highlighted that the proposed amendment would likely include all accidents abroad to which the Package Travel, Package Holidays and Package Tours Regulations 1992 apply.

3.4.3. Having previously mentioned the complexity that often faces claims of GI arising from package holidays, as well as claims of disease arising from the same circumstances, it was also highlighted to CILEx, by a number of respondents<sup>8</sup>, that accident claims can often prove highly complex and therefore will likely prove inappropriate in a FRC scheme (see paragraph 2.6 – 2.6.2).

3.4.4. CILEx would welcome additional consultation on this proposed amendment to paragraph 4.3(7) of the EL/PL PAP in order to establish the reasons why claims other than GI claims should be included as part of the Ministry of Justice's call for evidence. In addition to this, CILEx would welcome additional time in which to establish the need, and

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<sup>7</sup> "the Regulations," refers to the Package Travel, Package Holidays and Package Tours Regulations 1992

<sup>8</sup> A respondent said: "accidents abroad will then be included which is perhaps not appropriate because they take more investigation so potentially can't be dealt with proportionality to the fixed costs."

demand for a change to the protocols in regards to claims other than GI claims, and low value, non-complex PI 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);**

3.5. Respondents indicated caution when asked to what extent they agreed with the Government’s proposed amendment to paragraph 6.9 of the EL/PL PAP, which would extend the time within which a defendant must send to the claimant an electronic acknowledgment after receipt of the Claim Notification Form (CNF) from “the next day” to three days. 47% of respondents agreed or strongly agreed with the proposed amendment, citing that the change would present a more realistic timescale for defendants.

3.6. Of the 40% of respondents that disagreed or strongly disagreed with the proposed amendment to paragraph 6.9 of the EL/PL PAP, a majority commented that the extension of the time period would have little impact upon parties involved in these claims. Respondents highlighted three main concerns that would limit the proposed amendments effect:

3.6.1. First, the defendants in these cases are often large travel corporations or insurance companies who not only have the resources to send an acknowledgement after receipt of the CNF, but in some cases they have electronic systems that can produce acknowledgements almost immediately. Therefore, the need for an extension of this time period seems relatively low according to our respondents. Furthermore, the effect of this proposed amendment will likely lead to increased time spent on procedures which are, according to our respondents, relatively easy to deal with as they stand.

3.6.2. Secondly, respondents highlighted that the current procedures outlined in the EL/PL PAP provides a “must” condition that requires the defendant to send an acknowledgement after receipt of the CNF. However, this “must” condition seemingly has little impact since the sanction for breaching paragraph 6.9 is rarely if ever used. So much so in fact, that one respondent commented that “there is no sanction for breaching this section of the protocol in any event.” The proposed

amendment will therefore likely have little impact in cases where a defendant must send an acknowledgement after receipt of the CNF as the sanction has little to no bearing on the time period as it stands.

3.6.3. Thirdly, respondents highlighted that the protocol provided by the EL/PL PAP is “designed to make sure that claims progress more quickly and efficiently.” It therefore follows that by extending the time period in which a defendant can send an acknowledgement after receipt of the CNF, the progress of these claims will be delayed, therefore leading to a potential increase in time and costs for parties involved.

3.7. As a result of the issues highlighted by our respondents, CILEx is concerned that a limited amount of evidence has been used in drafting the proposed amendment to paragraph 6.9 of the EL/PL PAP. We would therefore request additional time to establish the impact the current time limits have on defendants following the receipt of a CNF, and the demand for an increase in the time period in which defendants can send the claimant an electronic acknowledgement of receipt of the 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;**

3.8. Respondents were equally split<sup>9</sup> when asked whether they agreed or disagreed with the proposed change to paragraph 6.10(b) of the EL/PL PAP, which would extend, from “the next day” to three days, the time within which an insurer must send an electronic acknowledgement to the claimant after its receipt by the insurer.

3.9. A small proportion of respondents who agreed with the Government’s proposal commented that the change would provide insurers with a more realistic and reasonable timescale.

3.10. However, a significant proportion of respondents who disagreed or strongly disagreed reflected upon comments that were made in paragraphs 3.6 – 3.6.3

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<sup>9</sup> 40% of respondent agreed with the Government’s proposal, while 40% disagreed or strongly disagreed.

which focused on the limited impact this amendment will have on insurers and claimants.

3.10.1. Respondents highlighted that insurers are often large corporations, with the resources and IT infrastructure that allow them to send an electronic acknowledgement after its receipt, to the claimant, almost immediately.

3.10.2. Furthermore, respondents highlighted that this amendment to the EL/PL PAP will likely result in extending the time period in which these claims are handled, therefore slowing the process down for defendants, claimants and insurers. This will likely have a significant impact on claimants who are likely to have considerably less financial resources to support their process through a claim when compared to a large package holiday company or insurer. As a result, the proposed amendment risks placing an unfair financial burden on the claimants in these cases.

3.11. CILEx would therefore ask the Ministry of Justice to provide additional information and evidence that lead to these proposed amendments to paragraphs 6.10(b) and 6.9 of the EL/PL PAP. Furthermore, CILEx would request that greater consideration be given to the potential financial cost that may unfairly impact claimants in these cases.

**(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;**

3.12. 73% of respondents disagreed or strongly disagreed with the proposed amendment to paragraph 6.11(b) of the EL/PL PAP, which would extend the period within which a defendant must complete the response section of the CNF and send to the claimant, from 40 days to 120 days,

3.12.1. A majority of respondents commented that extending the time period in which a defendant must complete the response section of the CNF and send to the claimant by 200% is far too long, especially when it is considered that the EL/PL PAP is implemented in order to ensure, to some degree, that claims are handled efficiently and effectively.

3.12.2. Although a number of respondents highlighted that this proposed amendment to paragraph 6.11(b) of the EL/PL PAP will provide defendants with a greater time period in which they can investigate the claim in greater detail, an overwhelming majority of comments criticised the extent of the increase.<sup>10</sup>

3.13. As a result of the potential benefit this proposed amendment could provide by allowing defendants additional time to seek the often-complex overseas evidence required in these claims, CILEx recommends that additional consideration be given to the extent to which the Ministry of Justice intends to extend the time period within which a defendant must complete the response section of the CNF and send to the claimant. The current proposal of extending the time period by 200% is arguably excessive and unnecessary.

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

3.14. On balance, respondents were reticent in agreeing with the proposed amendment to paragraph 7.32 of the EL/PL PAP. A small majority (53%) of respondents disagreed or strongly disagreed with the proposal to extend the total consideration period from 35 days to 70 days.

3.14.1. Of the 40% of respondents who agreed or strongly agreed with the proposed amendment however, many agreed that the timescale provided for consideration was more realistic, and would likely be beneficial “as it can sometimes take several weeks to obtain instructions from clients upon offers received and offers to make in response.”

3.14.2. However, these comments were outweighed by the number of comments provided by respondents who disagreed or strongly

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<sup>10</sup> A respondent said: “I strongly disagree if this applies to ALL EL/PL cases. The Claimant, in a FRC costs case which is intended to be dealt with swiftly and efficiently, should not be expected to wait 120 days for a liability decision. I accept that if the amendment is specifically restricted to accidents abroad, that additional time would be appropriate given the additional enquiries the insurer will need to make outside of the jurisdiction.”

Another respondent said: “This will unnecessarily lengthen the process. The point of the PAP was to streamline the process and promote the efficient handling of claims to reduce the time taken to settlement. Increasing the time limit will deflect from this purpose and cause delays in claims progressing.”

Another respondent said: “That is far too long. Half that time will be sufficient. The claimant will have lost interest in the claim by then.”

Another respondent said: “The purpose of the limited time is to ensure that only straightforward cases are dealt with under the protocol. If a case requires more investigation it will not be suitable for the protocol.”

disagreed with the proposed change to the EL/PL PAP. Many of the respondents reiterated earlier criticisms of the proposed amendments to paragraphs 6.11(b) and 6.10(b), which they deemed to be contradictory (see paragraphs 3.6.3 and 3.13.1).<sup>11</sup>

3.14.3. Respondents also expressed concerns with the practical use the proposed amendment would have in cases of low value PI claims, emphasising that by the point of consideration, almost all liability enquiries are complete, and the case is likely to be less complex in nature.<sup>12</sup> As a result, extending the total consideration period from 35 days to 70 days will only draw out the process of negotiation between the insurer and the claimant.

3.15. CILEx is also concerned of the ambiguity in the language proposed by the Ministry of Justice which may include claims other than GI claims which are the predominant focus of this call for evidence. As a result, we would welcome additional consultation on this proposed amendment to paragraph 7.32 of the EL/PL PAP in order to establish the reasoning behind extending the time period of consideration for the benefit of claims other than those that are GI related. CILEx would also recommend that greater consideration be given to the language used in the proposed amendments in order to avoid including claims that are not the predominant focus of this call for evidence.

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<sup>11</sup> A respondent said: "It again loses the benefit of the portal being speedy settlement for the injured party, but is a more realistic timescale for busy insurance companies, and will prevent claims dropping out of the portal for short delays which often leads to litigation then on costs."

Another respondent said: "with a longer period they will simply delay settlement, frustrate the "swift justice" that was supposed to be the point of the changes bought in in 2013."

<sup>12</sup> A respondent said: "Once liability is agreed the complexity is no different to any other case. The period should be consistent with other liability admitted cases - RTA/EL/PL."

Another respondent said: "All liability enquiries are complete by this stage. It's no more time-consuming valuing a sickness claim than any other, in fact I'd argue they are more straight forward in relation to quantum."

Another respondent said: "There is no need for this. The number of cases where insurers are unable to make an offer in the existing periods is miniscule. So, if they can value and make an offer already, why change it and give them longer? Presently our experience is that most insurers wait until the end of the negotiation period to make any serious offers. They may make low offers initially and then we have the usual to and fro before they make sensible offers right at the end of the negotiation period. So with a longer period they will simply delay settlement, frustrate the "swift justice" that was supposed to be the point of the changes bought in in 2013."

Another respondent said: "PAP designed to be quick and efficient. In my experience, if we have not been able to reach agreement within the 35 days it is because we need to go to Stage 3, not because we need more time to negotiate. Negotiations are usually over by this point and a judge is needed to make the decision because no agreement can be made."

**(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.**

3.16. Respondents were similarly cautious of the proposed amendment in the Ministry of Justice's call for evidence, which would see paragraph 7.50 changed in order to extend the period within which the Court Proceedings Pack must be returned to the claimant with an explanation as to why it does not comply from 5 days to 10 days. Although 43% of respondents agreed or strongly agreed with the proposed change to paragraph, 36% of respondents strongly disagreed.

3.16.1. Respondents who agreed or strongly agreed with the proposed amendment to the EL/PL PAP commented that the proposed new timescale is more realistic.

3.16.2. Respondent who disagreed or strongly disagreed however, cited previous criticisms highlighted in responses to other proposed amendments to the EL/PL PAP which seek to extend the time periods of different protocols (see paragraphs 3.6 – 3.6.3, 3.11.1 – 3.11.2 and 3.15.2).

3.17. The number of extended periods proposed by the Ministry of Justice as a result of the proposed amendments to the EL/PL PAP (Question 1 parts (g), (f), (e), (d) and (c)) could plausibly lead to a claim having its 'life' extended by 124 days. This, as highlighted by a CILEx member is neither "fair nor desirable."

3.18. As a result of this, and all previous proposed amendments to the EL/PL PAP which seek to extend the time periods for a variety of low value PI claims protocols, CILEx recommends additional consideration be given to the potential impact these changes will have on genuine claimants who may end

up being forced to wait an additional third-of-a-year. CILEx also asks if further evidence can be provided in order to establish the reasoning behind the extension of the periods specified in paragraphs 6.9, 6.10(b), 6.11(b), 7.32 and 7.50, and why it is that only the time periods for defendants are to be extended under the Ministry of Justice's proposals.

**(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.**

3.19. 43% of respondent agreed that GI claims made under the Package Travel, Package Holidays and Package Tours Regulations 1992, that include, in the alternative, claims under the Supply of Goods and Services Act 1992 or the Consumer Rights Act 2015, should also be subject to the EL/PL PAP and the proposed FRCs.

3.19.1. Respondents highlighted that the proposal could help ensure that claimants cannot avoid a FRC scheme if it were introduced,<sup>13</sup> and will likely have little to no impact upon the quantity of work faced by insurers, defendants and claimants.<sup>14</sup>

3.20. However, respondents that strongly disagreed (21%) commented that the Ministry of Justice's proposal will likely be inappropriate.

3.21. As a result of conflicting member opinions, CILEx would ask the Ministry of Justice to consult further on this proposal and to provide the evidence used to support this change in the EL/PL PAP.

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<sup>13</sup> A respondent said: "If claims under the 1992 and 2015 Acts are not included, Claimant's will simply submit claims under those provisions rather than the EL/PL PAP to circumnavigate the FRC. Therefore, claims under the 1992 and 2015 Acts should also be included.

<sup>14</sup> A respondent said: "Firms will have pro forma pleadings for such cases, so adding in the alternative claims doesn't add a lot to the workload. Otherwise these claims will be added in and defeat the purpose of the reforms."



**(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.**

3.22. A larger proportion of respondents (62%) agreed or strongly agreed that the date from which amendments to the EL/PL PAP should take effect, should be by reference to the date upon the cause of action accrues, when compared to respondents who agreed or strongly agreed that they should be by reference to the date that the claim notification form (CNF) is submitted (57%).

3.23. Despite the larger proportion of respondents agreeing or strongly agreeing that the date from which amendments to the EL/PL PAP should take effect, should be by reference to the date upon which the cause of action accrues, a larger proportion of respondents (38%) also disagreed or strongly disagreed with the same proposal.

3.23.1. CILEx feels this is important to consider since a smaller proportion of respondents (29%) disagreed or strongly disagreed with the proposal that they should be by reference to the date that the claim notification form (CNF) is submitted.

3.23.2. As a result of this significant mix of opinions from our members regarding this question provided by the Ministry of Justice, CILEx suggests that further consultation and consideration regarding this issue might be appropriate to tease out the complexity of issues at play.

**4. Question 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.**

4.1. In addition to encouraging members to provide their views on whether there are any particular issues that the Ministry of Justice should consider as part of

this work directly with The Ministry of Justice, we asked our members to provide us with the issues they felt should be considered by the Government. These are provided in the footnotes below.<sup>15</sup>

- 4.2. CILEx would ask that the Ministry of Justice consider other alternative reforms that could prove more effective in tackling the issues associated with the reported increase in low value PI claims arising from package holidays.
- 4.3. The Financial Guidance and Claims Bill<sup>16</sup>, for example, is a bill in which the Government may seek to implement additional reforms that may assure claimants with genuine claims of GI or low value PI claims arising from package holidays abroad are able access the justice they deserve. The bill would provide the Secretary of State with the power to institute a ban on cold-calling and the commercial use of any data obtained by such cold-calling. In CILEx's opinion, banning claims management companies from cold-calling individuals in regards to low value PI claims and PI claims more generally, would likely result in reducing the number of falsified and unscrupulous claims being bought to the courts.

**5. Question 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)**

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<sup>15</sup> Respondents said that the Ministry of Justice should consider:

- Sanctions "for every 'must' that appears in the protocol." Furthermore, where a sanction is not deemed suitable, the word 'must' should be amended to 'should'.
- Adding a provision for Counsels' fees.
- Amending the defence times for employer liability claims.
- Increasing the fixed fee rates set in 2013
- Providing more exit opportunities for claimants.

<sup>16</sup> <https://publications.parliament.uk/pa/bills/lbill/2017-2019/0070/18070.pdf>

- **Success rates (including pre-court settlement rates)**
- **Damages awarded**

5.1. CILEx has encouraged its members to engage directly with the Ministry of Justice in order to provide 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.

**6. Question 4: Do you have any other issues to raise that you consider to be relevant to this Call for Evidence?**

6.1. CILEx has encouraged its members to engage directly with the Ministry of Justice in order to provide their views in regards to whether there are any particular issues that should be considered as part of this work.

**For further details**

Should you  
require any  
further  
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