



Fixed Costs on Holiday Claims

New rules come in to force

The Civil Procedure Rules Committee announced on Friday 13 April 2018 that they have approved a move to limit legal costs sought by Claimants pursuing holiday sickness claims with confirmation yesterday (18 April) that the new regime is to start from Monday 7 May 2018.

ABTA statistics show that there has been a 500% rise in holiday sickness claims since 2013: 35,000 claims were pursued in 2016. ABTA believe approximately £240m was spent by the travel industry in defending gastric illness claims in 2016. Whilst some claims will be genuine, this spike does not correlate with actual recorded cases of sickness overseas which has actually reduced in recent years as a result of improvements in hygiene and other areas.

Low value (damages under £25,000) EL/PL personal injury claims arising from incidents occurring in England and Wales have been subject to a fixed costs regime since 31 July 2013. Injury claims arising from incidents outside England and Wales remained separate to the scheme as a result of investigations usually requiring additional expenditure due to such things as local agents and translation fees being required.

As holiday sickness claims were also excluded from the fixed costs regimes, travel industry campaigners

argued this was the catalyst to encourage claims management companies to aggressively pursue holiday sickness claims, which require minimal medical evidence if, as is often the case, a full recovery has been made.

The Civil Procedure Rules were amended as of 16 April 2018 and claims occurring outside of England and Wales will now also be subject to fixed costs. Such costs are determined in accordance with the value of the claim and the stage at which the matter settles.

More specifically, the new Pre-Action Protocol for resolution of package travel claims, as well as containing a list of definitions sets out the new scope, as follows:

The Protocol defines 'gastric illness' as: any gastrointestinal illness arising from a breach of contract or breach of statutory duty or common law duty in respect of services, food and beverages provided in relation to a package holiday; and the new scope is:

- A claim that arises from a gastric illness contracted during a package holiday
- Where no letter of claim has been sent to the Defendant before 7 May 2018
- The claim includes damages for personal injury, and



- The Claimant values the claim at no more than £25,000 (on a full liability basis (excluding interest))

It ceases to apply where a claim, at any stage is revalued at more than the upper limit.

The Claimant's representatives are encouraged to notify potential Defendants and/or insurer(s) of the likely claim, which does not start the time running in respect of a formal letter of response but should, in itself, be acknowledged within 14 days. The Protocol does however, allow for early disclosure of the medical records, a recurrent problem hitherto.

The subsequent delivery of a formal letter of claim to include location, details of the alleged breach, nature of the gastric illness and its impact together with illness dates, medical attention sought and recovery, starts the response period.

Defendants should acknowledge that letter within 42 days and then respond by no later than 6 months; the latter time running from the date of acknowledgment letter. Admissions can obviously be made, at this stage, and may well be binding. If a Defendant fails to acknowledge up to the 42 days, then the Claimant will be allowed to issue proceedings.

Lawyers will always look to take tactical advantage. The implementation of the new protocol will be welcomed by Tour Operators and defendant solicitors. There will, no doubt be a short-term flurry in letters of claim which, whilst not being caught by fixed costs, will still be subject to the same rigorous defence that has seen Claimants making false and fraudulent claims fined and sent to jail; and bringing a claim post 7 May 2018 does not mean it will be met with a lesser resistance, just that costs will not be the sole driver.

Everyone accepts that legitimate claims should be met, hopefully this amendment will be sufficient to bring holiday sickness claims back down to realistic levels.

NB: The new rulings currently do not apply to those claims generated 'at sea'/governed by the Athens Convention.

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