ABTA Briefing
Close the claims loophole

ABTA is asking policymakers to close the legal loophole that has left honest holidaymakers, and the UK travel industry, vulnerable to the questionable tactics of Claims Management Companies (CMCs). The UK travel industry has seen an increase in holiday-sickness compensation claims of more than 500% since 2013, and these claims now represent over 90% of all personal injury related claims received. The situation has reached a critical point, and unless tackled, the cost of holidays will rise, the choice of destinations and resorts could fall, and the much-loved all-inclusive model is at risk.

It appears the increase in claims is the result of a spike in CMC activity. These companies turned their attention to the travel industry following legal changes, introduced in 2012/13, primarily designed to tackle whiplash fraud in the UK insurance industry. CMCs are now directly targeting consumers in resort, on social media and via direct marketing.

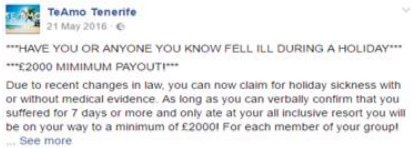
Why this matters for all UK holidaymakers

- The rise in sickness claims from UK holidaymakers is not being seen from other European markets, and this is harming the reputation of British holidaymakers overseas.
- Accommodation suppliers are considering making changes to the products offered, including ending all-inclusive holidays, and reducing capacity for the UK market
- If this remains unaddressed, UK holidaymakers will face increased costs for their holidays and could find they are being banned from visiting their favourite hotels
- Those submitting claims could also be unwittingly committing fraud, in the UK or in destination, and customers could face criminal and/or civil prosecution at home or abroad

What the industry needs to protect honest holidaymakers

- Amend Court rules (Pre-Action Protocols) to include holiday sickness claims in the fixed costs regime
- Ensure effective regulation of CMCs marketing activities in the UK, including a ban on cold calling
- Increase the Small Claims Track limit to £5,000. Enabling more low-value claims to be resolved through this regime would avoid costly court fees, whilst not limiting access to justice for more complex cases
- Increase transparency by identifying links between CMCs and legal firms (solicitors) and ensuring effective regulation and enforcement action against non-compliant businesses

Example of leaflet advertising claims services that used holiday company logos without permission



Example of social media advertising by CMC

This vehicle was parked outside a hotel in Spain in summer 2016

You can help – please write to the Justice Secretary today in support of honest holidaymakers

Background note - why we urgently need to close the holiday-sickness claims loophole

Since 2012, the Government has introduced a raft of legislative changes to the civil justice system, which included measures to clamp down on fraudulent personal injury claims and expand the regime for fixed recoverable costs. The most notable changes, implemented through a combination of new legislation (Legal Aid, Sentencing and Punishment of Offenders Act 2012 (LASPO)) and changes to the Civil Procedure Rules and Pre-Action Protocols include:

- Removing the ability for claimants to recover success fees and After the Event (ATE) insurance premiums
- Ban on referral fees
- Extension of the MOJ Claims Portal to Public Liability and Employers' Liability claims (although claims where the incident occurred overseas are explicitly excluded)
- Introduction of cost-management and budgeting rules
- Introduction of Qualified One Way Costs Shifting (QOCS), which prevents defendants from reclaiming certain costs even when a defence case is successful.

The combined effect of these reforms has had a considerable impact on the personal injury claims sector, especially on CMCs. According to the latest Claims Management Regulator's Annual Report for 2015-2016, since the Government reforms, the number of CMCs in operation in the RTA personal injury area has fallen by 12 percent. Meanwhile, a simple search engine query online will show a series of CMCs have sprung up specialising in holiday sickness, and many of these can be seen to have previously worked on RTA claims.

The growth in sickness claims continues to escalate rapidly, with the peak summer season now upon us. If claims follow the same pattern of annual growth seen in 2016, total claims will have increased by more than 700% on average across the industry. Yet, data the industry has used for decades to record and monitor sickness levels in resort, which is collected in the form of Customer Satisfaction Questionnaires (CSQ), has shown declining levels of reported illness over recent years. If the claims loophole remains, the costs associated with the claims will have to be passed on to customers in the form of increased holiday prices.

ABTA is also deeply concerned that changes to the Package Travel Directive, due to be implemented in the UK from 2018, will extend potential liability for sickness claims to many more UK travel companies, including SME businesses that are less able to develop processes and systems to deal with spurious claims. If the claims loophole is not urgently closed, we anticipate companies facing problems with obtaining or renewing liability insurance cover and potentially serious financial difficulties.

ABTA believes the situation created by the previous reforms, which has left the travel industry vulnerable, was entirely unintended and brought about by a regulatory oversight. There is a simple solution to begin to address these issues urgently; amending the Pre-Action Protocol to enable claims brought against a UK travel company within the scope of the fixed costs regime. This will not restrict access to justice for genuine claimants, but will reduce incentives for CMCs to promote the lodging of spurious claims.

The claims journey – what is happening?

There are a number of reasons travel companies have been reluctant to defend claims in cases where a claimant alleges illness while on holiday:

- In particular for "all-inclusive" resorts, the Courts have appeared somewhat reluctant to identify potential alternative sources of any infection, despite the absence of any positive evidence of a sickness outbreak in resort

- The legal costs involved in defending these claims are often disproportionate to the damages awarded to the customer, and the Qualified One Way Costs Shifting rule means companies are often unable to recoup costs even when they successfully defend a claim. It cannot be correct for it to be cheaper to settle than to defend dubious or dishonest claims
- The historical nature of many of the claims makes compiling evidence difficult, as customers can launch a claim up to three years after their holiday took place

ABTA has been made aware of dubious marketing tactics being used by CMCs, including UK holidaymakers being approached by CMCs representatives in resorts and in the UK (either at arrival ports or via electronic or telephone communication). The tactics used also include scrutinising social media accounts to monitor and approach consumers recently returned from a holiday. Customers often are given false information around the existence of money set-aside for compensation payments, by either industry or the Government, and are not being made aware that there are potential legal consequences in pursuing false sickness claims.

The link between CMCs and solicitors firms, who ultimately pursue many of the claims, is difficult to assess, as there is a lack of transparency, especially concerning whether referral fees – outlawed in the previous reforms – are continuing to be paid. ABTA is calling on the Government to oblige solicitors firms pursuing claims to reveal the source of claims, and more effective enforcement powers for the regulators, the Claims Management Regulator and the Solicitors Regulatory Authority.

How the practices of CMCs are failing to benefit holidaymakers

ABTA strongly believes that, where consumers have a legitimate compensation claim against a tour operator, they should receive 100% of any compensation awarded. We are also aware, as consumers have contacted Members and ABTA directly, that many consumers are deeply concerned to receive unsolicited calls relating to their recent holidays.

The UK travel industry continues to support the ability of UK holidaymakers to pursue their UK travel company in the event of a genuine sickness claim. Regulation 15 of the 1992 Package Travel Regulations (PTRs) places liability on package holiday providers for the proper performance of all services sold as part of the package (regardless of the fact that those services are supplied by third parties such as hoteliers and airlines). This is a long-standing regulation, and one that the industry values highly, as it underpins the consumer confidence on which the industry relies. Where consumers have a genuine claim, they should speak to their operator, and importantly, where compensation is due this should be paid 100% to the consumer affected.

ABTA also operates a longstanding and effective system of Alternative Dispute Resolution, dealing with a wide range of consumer complaints. As an additional service to its Members, ABTA has launched a pilot ADR scheme for personal injury claims, including holiday sickness claims. The scheme is currently free at the point of use for consumers, and they retain 100% of agreed compensation payments, enabling genuine claims to be resolved outside formal Court processes.

Further Information

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