# Ministry of Justice
# Call for Evidence on personal injury arising from package travel and other matters
# ABTA submission – November 2017

**About ABTA**

This response is submitted on behalf of the membership of ABTA – The Travel Association. ABTA was founded in 1950 and is the largest travel trade association in the UK, with almost 1,200 members and over 4,400 retail outlets and principal offices. Our Members range from small, specialist tour operators and independent travel agencies specialising in business and leisure travel, through to publicly listed companies and household names.

Annually, ABTA Members' turnover is in excess of £37 billion. ABTA's focus is ensuring that Members can operate their businesses in a sustainable and successful manner, enabling their customers to travel with confidence.

ABTA also operates a Code of Conduct for the protection of consumers with standards of conduct exceeding the legal minimums, which is monitored and enforced by a full time team within our Legal branch. The Code is overseen by a disciplinary Code of Conduct Committee, who have powers to reprimand, fine and terminate Membership. ABTA also works in times of international or destination crisis to support consumers, working with key stakeholders including the FCO Consular and Crisis teams.

ABTA warmly welcomes the opportunity to respond to the Call for Evidence.

**Executive Summary**

a) ABTA was alerted to the problem of a significant increase in holiday sickness claims during summer 2016. As a result, we undertook collation of data with ABTA Members to better understand this increase, and what was driving the rise in claims volumes.

b) The UK travel industry has seen an average increase in holiday illness related compensation claims of more than 500% since 2013. In addition, illness related claims now represent over 90% of all personal injury related claims received, which is a dramatic increase from a historically stable level of around 65%.

c) ABTA believes the increase in holiday illness claims has been spurred by the previous reforms to the civil justice regime in England and Wales, made through amendments to the Legal Aid, Sentencing and Punishment of Offenders Act (LASPO) in 2012/13. These reforms left the travel industry vulnerable to the activities of claims management companies because of a blanket exclusion for overseas claims from a fixed recoverable costs regime. The exclusion applies regardless of whether claims are brought through the Courts of England and Wales. We believe this was a regulatory oversight, and the subsequent diversion of claims to the travel sector is an unintended consequence of this oversight.

d) In June 2017, following detailed work with Members and destination partners, ABTA launched a campaign, "Stop Sickness Scams", to raise awareness of the problems of increasing holiday illness claims. "Stop Sickness Scams" has two primary objectives; calling for regulatory action, including closing the loophole that has

enabled travel companies to be targeted, and raising awareness amongst UK consumers of the consequences of a rise in holiday illness claims. These consequences include the risk of rising holiday prices, and the withdrawal of certain products from the UK marketplace, as well as personal risk of prosecution at home or in destination for those submitting false or exaggerated claims.

e) As a result, we welcomed the announcement made by the Secretary of State, the Rt Hon David Lidington MP, on 9 July, that the Government will ask the Civil Procedure Rules Committee (CPRC) to examine options for including holiday illness claims in a fixed recoverable costs regime. We strongly support the proposal, which will provide a level playing field for holiday illness claims and other low-value personal injury claims brought through the Courts of England and Wales. Importantly, the inclusion of holiday illness claims in a fixed costs regime will not restrict access to justice for genuine claimants, but will reduce costs incentives for claims management companies (CMCs) to promote the lodging of spurious claims by consumers.

f) ABTA believes the immediate priority must be including these claims in a fixed recoverable costs regime, in order to address the immediate mischief of false and exaggerated claims. We agree with the Government's position that the EL/PL Protocol will be the most efficient way of doing so in the short term.

g) ABTA considers that other matters, such as inclusion in the Claims Portal, should be addressed as part of wider investigations into reforms to the civil justice regime that are already ongoing. This approach will allow more detailed consideration of a long term solution, including Lord Justice Jackson's recommendations, and will also provide an opportunity for cost savings and efficiencies in future development of the Claims Portal.

h) There are legitimate claims for holiday illness, and it is important to reiterate that ABTA continues to support the ability of UK holidaymakers to pursue their UK travel company in the event of a genuine 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. The PTRs underpin 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.

i) ABTA is 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 holiday illness claims are not brought within a fixed recoverable costs regime ahead of July 2018, ABTA anticipates companies facing problems with obtaining or renewing liability insurance cover, and potentially suffering serious financial difficulties. For this reason, we urge the CPRC to proceed with reforms as quickly as possible.

**Call for Evidence Questions**

***Question 1 – The Government's proposed amendments to the pre-action protocol***

**(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";**

1. ABTA believes the date of notification of a claim is the most reasonable and effective approach. This will mean that new claims are subject to the new rules, and act as an effective deterrent against bringing forward historical claims without merit.

### (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;

2. ABTA supports the proposal to bring holiday sickness claims within the scope of a fixed costs regime, and agrees that the EL/PL Protocol is the most efficient way of doing so in the short term. The immediate priority must be to tackle the problem of fraudulent and exaggerated holiday illness claims, following growth of claims volumes in excess of 500% on average across the UK's outbound travel industry over recent years.

3. As a way of addressing the immediate mischief, ABTA supports an amendment to remove the existing exclusion for holiday illness claims only, and suggests adding the following or similar wording to 4.3(7): ***"save where the claim relates to illness contracted during an overseas holiday or cruise"***.

4. This will allow holiday illness claims to be brought quickly into the scope of a fixed recoverable costs regime, reducing incentives for claims management companies to target the travel industry, as we have seen in recent years.

5. However, removing the exclusion for holiday related illness claims must be seen as the first part of a two-stage process, which would ultimately seek to bring all holiday related claims (including accidents) into a fixed costs regime. Otherwise, ABTA would be concerned that there is a clear risk of dispersal of claims either within the travel industry or elsewhere.

6. ABTA's support for a two-stage process is based on a short term solution that would result in holiday illness claims being handled outside the Claims Portal in the first stage. ABTA Members do not currently handle claims via the Portal and the proportion of holiday sickness claims which are repudiated (and therefore would fall outside the Portal) is, we understand, significantly higher than in RTA or EL/PL claims generally. The Portal would require costly redevelopment work in order to handle overseas claims and, given that further reforms around the way low-value personal injury claims are handled are imminent, there will be cost and procedural efficiencies in undertaking a single redevelopment project of the Portal, once all reforms are in place.

7. In the event these claims were excluded from the Claims Portal, it would be relatively simple for a Defendant to nominate a dedicated email inbox to which Claims Notification Forms (CNF) could be sent electronically. In the alternative, the EL/PL Protocol envisages situations where the CNF can be sent by first class post (paragraph 6.1 of the Protocol)

8. In relation to the appropriate costs regime, there are a number of considerations which should be taken into account, including the recommendation of Lord Justice Jackson in his report [Review of Civil Litigation Costs: Supplemental Report], that holiday sickness claims (except for multi-party actions) be aligned with the costs regime for RTA claims.

9. Another feature of holiday claims is the prevalence of small family group claims within the travel industry and the duplication in costs that exists within these claims. To illustrate the commonality of this feature within the travel industry, the average claimants per claim figure in the industry stands at 2.6, which is far in excess of comparable numbers in other personal injury sectors.

10. Finally, and connected with the small family groups, there are non-personal injury claims for loss of enjoyment and diminution in value which are inextricably linked to the personal injury claims. By way of illustration, a family of four (2 adults, 2 children) on one holiday booking reference could have two Claimants with personal injury claims and two others with claims for loss of enjoyment and diminution in value. On a strict interpretation, the non-personal injury claims should fall outside any PI protocol and would be considered as Small Claims Track matters when valued under £10,000. However, it is impractical to separate the two groups of claims, given that the claims for diminution and loss of enjoyment are wholly dependent on a finding of liability in the personal injury claims. In practice therefore, they are normally handled as part and parcel of the personal injury claims, although should receive minimal costs given that the substantive work on liability would relate to the personal injury claims.

11. If a decision is indeed taken to restrict the amendment to holiday illness claims at this time, ABTA would urge that the Civil Justice Council (CJC) be tasked with urgently bringing forward their investigation into further reforms of low value personal injury claims, as there is clearly a strong longer term policy interest in ensuring a level playing field in costs terms for accident claims relating to overseas holidays. We are happy to provide such further information and support as required for this process.

12. In the alternative, if it is decided to bring both holiday illness and holiday accident claims into a fixed costs regime, ABTA suggests an amendment to remove the existing exclusion for overseas claims and suggests adding the following or similar wording to 4.3(7): ***"save where the claim relates to personal injury, including illness, where the alleged breach of duty occurred during an overseas holiday or cruise"***. In the short term, these claims should be handled outside of the Claims Portal, for the reasons provided above.

13. Similar considerations in relation to family claims occur in holiday accident claims, where the family of the injured party may suffer diminution in value or loss of enjoyment, as a consequence of the injury (albeit that they do not themselves have a personal injury claim).

14. Options for fixed costs regimes for holiday claims may include the following: application of RTA fixed costs to sickness claims; application of PL fixed costs to accident claims; consideration of application of a reduced percentage or fixed fee for second and subsequent Claimants who form part of a group; or a new table of costs for holiday claims. ABTA and its Members are happy to participate in further discussions with the MoJ and/or CPRC concerning this area.

**(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);**

15. ABTA supports this proposal.

**(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;**

16. ABTA supports this proposal.

**(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;**

17. ABTA supports this proposal.

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

18. ABTA supports this proposal.

**(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.**

19. ABTA supports this proposal.

**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.**

20. ABTA believes the immediate priority for the Ministry of Justice and the travel industry is tackling ongoing fraud by bringing holiday sickness claims within a fixed costs regime, thus deterring those that are seeking to encourage spurious and exaggerated claims.

21. As a result, ABTA supports the proposal to bring holiday related illness claims within the EL/PL Protocol, at least initially, but recommends that these be excluded from the Claims Portal in the short-term via an amendment to the relevant section of the Pre-Action Protocol for Low Value Personal Injury Claims (EL/PL) (5.1). Admittance to the Portal could be reviewed alongside other considerations, such as extending fixed costs to other holiday related claims.

22. There are significant differences between the characteristics of the majority of existing EL/PL claims and holiday illness claims, which we believe make the Claims Portal an unsuitable vehicle for these claims. The most important difference surrounds repudiation rates. Unlike the majority of insurer backed claim, the vast majority of holiday sickness claims currently being received are being repudiated, and would therefore be dealt with outside of the Portal, this means only a fraction of claims would be likely to remain within the Portal.

23. ABTA believes the cost of developing the Claims Portal to enable holiday sickness claims to be included,

which is significant, is difficult to justify at the current time.

24. Further, it is likely that the Portal will require substantial redevelopment in connection with reforms due in a relatively short timescale under the Lord Justice Jackson proposals, the Civil Liability Bill, and changes to the Small Claims Track. Rather than having a separate development plan for holiday illness claims, a comprehensive one-off review should produce significant cost efficiencies.

25. In addition, following the recommendations of Lord Justice Jackson that holiday illness claims be aligned with the fixed costs available to RTA claims. ABTA believes further examination of this position, and indeed the suitability of any existing Protocols generally on a longer-term basis, should be undertaken by the CJC. This work could align with other low value personal injury reforms, with any longer-term decisions implemented alongside those reforms.

26. On the issue of multiple claimants, ABTA would highlight that the vast majority of holiday sickness claims within the travel industry are submitted relating to single bookings, but on behalf of multiple Claimants (family groups etc.). The average claimant per claim figure stands at around 2.6.

27. In practice, the vast majority of work involved in collecting instructions for a claim with multiple Claimants will be taken from one "lead" claimant. As such, ABTA believes it is disproportionate for multiple sets of PL level costs to be paid on the majority of these claims. This is particularly the case on claims where Claimants are claiming for a mixture of illness and loss of enjoyment, and diminution in value. For example, in a party of four, it is possible that two Claimants will be claiming for illness, whilst the other two are submitting claims only for loss of enjoyment and diminution in value. We have included examples of duplicated costs in the appendices enclosed in our response.

28. In addition, when dealing with holiday accident or illness claims, it is important to avoid duplication of damages. Although PSLA is primarily intended to compensate the Claimant for pain and suffering caused by the injury / illness, it is also intended to compensate for the impact of the injury on the Claimant's enjoyment of life and there is accordingly some risk of overlap with a claim for loss of enjoyment.

29. ABTA would draw the attention of the CPRC to Milner v Carnival [2010] EWCA Civ 389, which is the leading case on calculating diminution in value and loss of enjoyment in holiday claims.

    Damages for diminution in value are intended to compensate the Claimant for the difference between the contracted services and those actually provided and it is appropriate to take an arithmetical approach. The Court of Appeal in Milner stressed that in assessing damages for diminution in the value of the holiday, it is essential to disregard how the claimant may have felt about the diminution in the service supplied, for therein lies the risk of a duplication of damages.

    For loss of enjoyment, a determination is made of the extent of the distress caused by the breach, and the financial value to be placed on this distress (bearing in mind awards made in other areas of the law and in other holiday claims).

    Then the court must examine the resulting damages figure and decide whether it is either excessive or inadequate compensation for the breach(es) complained of. The total award may then be adjusted as appropriate.

    In practice, when dealing with holiday sickness claims, the calculation of damages for diminution and

loss of enjoyment forms a very minor part of establishing quantum. Where you have, for example, a claim from a family of 4 where 1 person is ill and the other 3 are merely claiming for diminution and loss of enjoyment, the significant amount of work (for both Claimant and Defendant) will be in determining liability, causation and quantum for the first claim. The work required to deal with the other 3 claims will be merely incidental to the first claim.

**(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.**

30. As above, ABTA proposes that the wording at 4.3(7) of the Protocol be sufficiently broad to ensure that all holiday illness claims be immediately captured within the fixed costs regime. We do not believe it is necessary to refer directly to regulation to achieve this objective. When longer term reforms are addressed, the CPRC/CJC could consider a definition which encompasses personal injury (accident) claims where the accident occurs during an overseas holiday or cruise. This approach should close off the avenue of Claimants seeking to lodge claims through the SGSA or CRA, as an avoidance mechanism.

**(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.**

31. ABTA believes the date of notification of a claim is the most reasonable and effective approach.

***Question 2 – Are there any 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***

32. ABTA supports an obligation on solicitors to name the source of any claims they decide to pursue, including where these have been referred by claims management companies. We believe this obligation would promote transparency in the claims process, and would support the regulators, the Claims Management Regulator (CMR) and Solicitors Regulatory Authority (SRA) in identifying relationships, making enforcement easier and more effective. We believe the CNF should be amended to include the source of claim as a required field.

33. ABTA believes there should be an obligation for early notification of claims. We suggest that this should be aligned to provisions within the PTRs and new Package Travel Directive, which require the consumer to communicate, without undue delay, any failure in the provision of the services. Where the consumer fails to report their illness or injury, without good reason, the courts should be invited to infer that the illness or injury

(if proved) was minor in nature.

34. There are a range of problems associated with medical evidence, many of which are not specific to holiday illness claims, and ABTA urges the CJC to consider carefully how reporting of medical evidence can be improved generally.

35. ABTA would support consideration by the CJC of the use of MedCo for holiday illness claims in the future. As part of this work, we believe the CJC should also consider whether it is appropriate to set an established process for seeking medical reports, such as obliging the first report to be obtained from a MedCo approved expert and at a fixed cost.

36. ABTA also asks that the CJC consider whether it is appropriate to set a time period during which medical treatment should be sought, failing which the courts should be invited to infer that the illness or injury (if proved) was minor in nature.

37. Following the recommendation by Lord Justice Jackson that costs for holiday illness claims be aligned with RTAs, ABTA asks the CJC, and other policymakers, to reconsider the appropriate value level for the Small Claims Track relating to these claims. ABTA does not consider there to be any reasonable justification for illness claims not to be brought within a £5k limit. A significant number of holiday illness claims would fall within that limit.

38. ABTA would propose that, in future, if illness claims under £5,000 are handled under the Small Claims Track or fixed costs regime, then a ban on pre-med offers could be acceptable to the industry, subject to appropriate provisions in place to control appointment of experts, timing for obtaining medical reports and costs.

39. ABTA is aware of the proposals made for introduction of a tariff system in relation to RTA whiplash claims and would encourage a parallel review of holiday sickness claims to see if this also might be appropriate. In particular, ABTA would refer the CJC to the Judicial College Guidelines figures for Illness/damage resulting from non-traumatic injury e.g. food poisoning (14th edition, Chapter 6 (G)(b)). The lowest category £800 - £3,460 refers to 'Varying degrees of disabling pain, cramps and diarrhoea continuing for some days or weeks'. This can be contrasted with sums payable for Minor Injuries (Chapter 13) where injuries with a complete recovery within three months attracts awards between £1,200 and £2,150. The new tariffs proposed for whiplash claims range from £225 (0-3 months) to £3,725 (19-24 months).

40. ABTA believes there is a need for balance within the Qualified One-Way Cost Shifting (QOCS) provisions, to ensure that both Claimants and Defendants are sharing the risks of litigation. We do not consider the current regime to deliver balance, as the Claimant has significantly lower risk in practice.

41. Any wider consideration of the effect of QOCS should also review how the lack of clarity around 'fundamental dishonesty' makes it difficult for Defendants to succeed in recovering their costs, which is a disincentive to run claims to trial, even where there is evidence of dishonesty.

42. ABTA also believes the CJC should consider issues around Pre-Action Disclosure. We urge consideration of the introduction of mandatory information that Claimants must provide in sickness claims, including: the date of

commencement of symptoms, description and extent of symptoms, duration of symptoms and, where it is alleged that symptoms are ongoing, details of ongoing symptoms; details of medical treatment or advice sought in overseas destinations and reports of illness made in overseas destination or confirmation that no report or medical attention was sought (with reasons).

43. ABTA supports the CJC being tasked with consideration of the introduction of a Pre-Action Protocol for Small Claims Track to support litigants in person. We also support the provision of further guidance for litigants in person.

44. ABTA believes that genuine Claimants who suffer illness on holiday should receive 100% of an award made, and we support the introduction of a mandatory obligation for CMCs to draw consumer's attention to available ADR schemes. For example, ABTA operates an ADR scheme for personal injury cases, delivered independently by CEDR, a recognised ADR body. Under this voluntary ADR scheme, which is available free to consumers, the Claimant will keep 100% of any award.

45. ABTA believes that greater protection would be afforded to consumers by having a level regulatory playing field for all those who are likely to offer their services to claimants making personal injury claims, including McKenzie friends. In particular, McKenzie friends should be required to disclose up-front any connections they have with law firms or medical experts and tell clients what percentage they will deduct from damages as their fee (and whether the claimant will be liable for any other costs or expenses).

***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)***

46. ABTA Members began to report a sharp rise in the number of illness related personal injury claims received in early 2016. ABTA's collated data on claims, which has been shared with the MoJ, shows that the growth in illness related claims appears to have started in 2015, with claims figures increasing by 69% on the year before. This was then followed by a major escalation in 2016, as year on year growth in holiday illness claims reached 323%. The claims are generally brought under the Package Travel Regulations, with many being brought many months or even years after the claimed event, and the vast majority of claims relate to all-inclusive arrangements.

47. Overall, ABTA's work with Members to collate claims data has demonstrated an average rise in claims figures for holiday illness of more than 500% in the period 2013-2016. Several Members reported a rise in gastric illness related claims in excess of 700%.

48. Data collated for 2017, which covers the period up to end of June, shows that claims have continued to rise over the first six months of the year. It is difficult to assess whether this pattern will continue, and the period does predate several regulatory activities and the launch of ABTA's Stop Sickness Scams campaign, however we believe this demonstrates the need to urgently bring these claims within a fixed costs regime.

49. The data collated by ABTA shows that the proportion of personal injury related claims that are related to gastric illness has also increased dramatically, accounting for more than 90% of all claims received in 2016. This is a substantial increase from the historically stable level of around 65%, and has climbed gradually during

the period 2013-2016.

50. Further, industry data collated through Customer Satisfaction Questionnaires (CSQ), which have been used for decades to monitor customer feedback, including reported sickness levels, show no increase in sickness in the main resorts affected during the period 2010-2016. Indeed, for many of the destinations affected, including Spain, the general trend has been declining levels of reported sickness throughout the period.

51. According to the Office for National Statistics, there were 17.5 million package holidays sold in 2016. Of these package holidays, ABTA estimates that there is in the region of 6 million all-inclusive holidays taken each year from the UK.

52. A further 3 million travel arrangements are currently deemed flight-plus arrangements, within the ATOL regime but outside of the full scope of the PTRs. ABTA believes the majority of these flight-plus arrangements will become package holidays in 2018, once the new Package Travel Regulations are adopted. A proportion of these will be all-inclusive arrangements, and ABTA would estimate this figure to be in the region of 300-400,000 arrangements per annum.

53. ABTA Members have informed us that they have seen a high level of illness claims where no complaint was made in resort or immediately post-holiday, and the first they know of the complaint is when they receive a Letter of Claim, sometimes years after the holiday in question.

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

54. ABTA welcomes the recent comments by Justice Secretary, the Rt Hon David Lidington MP, that he intends to continue reforms of the Small Claims Track limits, which were stalled earlier this year because of the General Election.

55. In connection to Small Claims Track reforms, as above, ABTA would draw attention to Lord Justice Jackson's conclusion that there is no reason for a different treatment of RTA claims and holiday illness claims for costs purposes. We believe this logic should also be applied to changes the Small Claims Track, and would support the setting of a limit of £5,000 for holiday illness claims. ABTA urges the Government and policymakers, including the CJC, to give further consideration to this area in upcoming reforms.

56. ABTA also welcomes the Government's recent commitment, made during debates on the Financial Guidance and Claims Bill in the House of Lords, to bring forward an amendment to ban cold-calling by CMCs during consideration of the Bill in the House of Commons. ABTA is strongly supportive of a ban on unsolicited approaches by claims companies.

57. We believe a cold-calling ban will aid regulators in ensuring that claims are not pursued which have been instigated in this way, as the current regulation banning solicitors from pursuing these claims is difficult to enforce due to a lack of transparency in the claims process. Further, we believe the move will enable consumer awareness to be used as a compliance tool, as consumers will be better educated that cold-calling for personal injury claims is a prohibited activity, and might consequently be less likely to engage or to be enticed to lodge claims.

58. Changes to the Package Travel Directive, due to be implemented in the UK from July 2018, will extend potential liability for sickness claims to many more UK travel companies. This extension will include many SME businesses being brought within scope for the first time, who are typically less able to develop processes and systems to deal with spurious claims. If holiday illness claims are not brought within a fixed costs regime, ABTA would anticipate companies facing problems with obtaining or renewing liability insurance cover. As a result, these businesses could be faced with significant financial difficulties in the event of a spike in claims.

59. ABTA has been working with destination governments and related stakeholders, including national tourism boards and hotelier associations, across a number of popular destinations for UK holidaymakers. It is clear from this work that rise in sickness claims from UK holidaymakers is not being replicated in other European markets, and the situation is harming the reputation of British holidaymakers overseas.

60. ABTA is aware that accommodation suppliers, who often have contractual clauses that make them liable for the costs of claims, are actively considering making changes to the products offered, including ending all-inclusive holidays, and reducing capacity for the UK market. If the rise in false or exaggerated illness claims is not addressed, and these claims are brought within a fixed costs regime, UK holidaymakers could face increased costs for their holidays, and find they are being banned from visiting their favourite hotels.

**Further information**

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