

## FB - Press Release - Campaigner condemns Government's move on Holiday Claims

Some said it was inevitable; some were fatalistic. On Friday 13 April, 2017, the government announced that it was going to move holiday claims into a fixed-legal-costs regime. The date of this decision, coincided with the original announcement, which was made on Friday 13 October 2017; these two dates now cement the decision to strategically provide support for an Industry over and above the higher goal of ensuring an unfettered access to justice for ordinary Consumers.

The announcement made a few days ago, of a government taking action on fraudulent holiday claims, was met with celebration and a determination that the 'loophole' on legal costs had been closed. Consumers could be forgiven for thinking that they had somehow been the beneficiaries of a 'loophole', akin to those who use such 'loophole's' to pay less tax. What has been closed is an unfettered access to an expertise and therefore justice that could help them with their claims, using the accepted method by which skilled representatives would get paid.

Holidays are one of the main purchases that UK Consumers make each year which, according to government, accounts for 5% of the weekly income of the average UK household.

Taking into account the different surveys of the annual cost per package holiday per person, this amounts to £604.13. A family of 4 can therefore expect to pay £2,416.52; add to that, an average of £1,000 spending money and £400 for Travel Insurance, parking and an overnight hotel, the total for an average family amounts to £3,816.52 for that Package Holiday. Given the government's estimate of the average weekly spend on holidays, these figures suggest a 13.24% spend against the government's average weekly spending ability of £554.20 (£28,818.40pa)<sup>1</sup>.

For some time, it has been difficult to understand how big the problem was with regards to the claim of fraudulent holiday claims. Following the government's announcement, it appears that up until 2013, there were apparently 'around' 5,000 fraudulent claims, presumably made each year. From 2013 to 2016, this figure rose to 25,000 (presumably each year), with no comment about what has happened to this type of claim in 2017 and beyond.

In examining the propositions around the rise in fraudulent claims, it is noted that several cases such fraud were privately prosecuted by travel companies; it begs several questions:

1. What happened to the fraudulent claims made up to 2013 - were they reported to the police?
2. What happened to the claims made between 2013 to 2016 - were they reported to the police?
3. Were cases considered under Section 2 Fraud Act 2006?
4. Were offences considered against the 'seekers' of these claims under the extensive provisions of The Serious Crimes Act 2007?
5. What was the outcome of these reports and alleged offences?
6. Given that some 20m Package Holidays are sold each year against the alleged scale of 25,000 'fraudulent' claims each year; what impact assessment on access to justice/proportionality was carried out by government on their proposals vs the travel industry's representations, against a problem that represents 0.125% of all package holidays sold?
7. Given that estimates vary between how many people suffer with holiday illness; measuring against 15% (3m) of holidaymakers suffering illness; what impact assessment on access to justice/proportionality was carried out by government on their proposals vs the travel industry's representations against a problem that represents 0.83% of estimated holiday illnesses each year in package holidays?

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<sup>1</sup> Noting the government's figures, where they claim that each household spends 13% of its income on 'Recreation & Culture'; it is possible therefore that UK households are prioritising their spending on holidays rather than on other aspects of this category of spending

Frank Brehany, an Independent Consumer Campaigner & Commentator submitted three responses to the government's Consultation (his first responding to initial points of concern, the second related to highlighting important case principles on access to justice, and, his third report challenged assumptions made by Lord Keen, guided the government on the issues within holiday claims and set out a comprehensive reform of the pre-action protocol).

Frank considers that this latest decision is folly, because rather than leading to a reduction in claims, it will:

1. Ultimately increase the number of Litigants in Person before the Small Claims Court;
2. That increase will cause the Travel Industry to spend more, not less in defending genuine claims;
3. It is likely that skilled specialists will leave this work giving rise to the creation of Legal Factories;
4. The creation of these Legal Factories will deal with volume and therefore increased PR, will lead to a higher number of claims and provide no overall savings to the Travel Industry.

Frank states:

"It was clear to me for some time that this government is not interested in listening to, let alone speaking with individuals or organisations that could inform their thinking. I am well and truly on the record, for many years, in condemning the actions of a small number of holidaymakers and companies that engage in this activity and I have been consistent in calling for action in law"

He continues:

"Whilst various parties are now examining the consequences of this decision an even greater whammy awaits the Consumer; when this government increases the small claims limit for personal injury claims in the small claims court, Consumers will be cast adrift and will experience great difficulty in actioning their complaints"

He concludes:

"I have dealt with many holidaymakers who have suffered detriment from a poor holiday product; in some cases it has affected their livelihoods and social lives completely. This important Consumer spend each year is not being recognised along with the problems that sometimes flow from their complaints. There is no question, that this government announcement is a disproportionate sledge-hammer to crack a nut, which delivers a form of State-Aid to an Industry, let alone a further fundamental weakening of Access to Justice; in this brave new-world, is this the new fairness for Consumers, so often trumpeted, that now awaits them?"