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## **Government begins crackdown on fraudulent holiday sickness claims following landmark private prosecution**

### *Background*

In June 2015 and July 2016, Paul Roberts, Deborah Briton and their two children visited the ever-popular holiday destination of Mallorca, the largest of the Balearic Islands.

Upon return to the UK after their 2015 holiday, Ms Briton posted on her Facebook account: "*Safely home after two weeks of sun, laughter, fun and tears. Met up with all our lovely holiday friends who made our holiday fab*" • .

She similarly posted after the 2016 holiday: "*Back home after a fantastic holiday, my favourite so far*" • .

Notwithstanding their evident enjoyment of their holidays, the couple instructed solicitors in August 2016 and claimed against the hotel for £20,000 compensation after gastroenteritis, (also known as "Spanish tummy" • ), allegedly ruined their holidays.

The letter before claim stated that: "*Our client's holiday was ruined due to their symptoms as they were ill for the entire remainder of the trip. They were unable to enjoy the holiday*" • .

Upon discovery of Ms Briton's clearly inconsistent Facebook posts and witness accounts of the family's enjoyment of their holidays from hotel staff, tour operator Thomas Cook commenced a landmark private prosecution against the couple.

The prosecution follows a 500% increase in fraudulent holiday food claims since 2013, which led Foreign Secretary Boris Johnson to report in June 2017 that British holidaymakers' digestive systems have "*become the most delicate in the world*" • .

### *How to bring a private prosecution*

Thomas Cook was able to bring a private prosecution pursuant to section 6(1) of the Prosecution of Offences Act 1985, which provides that any individual or organisation can commence criminal proceedings.

Although the vast majority of criminal proceedings are commenced by the Crown Prosecution Service, (the "CPS"), private prosecutions are a useful, albeit often costly, mechanism for the victims of crimes that the CPS do not prosecute. This is particularly important in times of austerity, during which state prosecution services may not have sufficient resources to prosecute successfully particular crimes.

For example, the Association of British Insurers, (the "ABI" • ), estimate that, in 2016, insurers detected 125,000 fraudulent insurance claims worth £1.3 billion and that a similar amount of fraud goes undetected each year.<sup>[1]</sup> Notwithstanding this, it seems that the CPS does not have the resources to dedicate sufficient time to cracking down on the problem of undetected fraud.

The private prosecution of Mr Roberts and Ms Briton is a vital step in the right direction, illustrating how useful private prosecutions can be in plugging any gaps left by the budgetary constraints imposed upon state prosecution services.

### *The sentencing hearing*

After admitting four counts of fraud, Ms Briton was sentenced to nine months, and her partner 15 months, in prison.

Judge David Aubrey QC, sitting in Liverpool Crown Court, was highly condemnatory of the couple's behavior. He referred to their claims for compensation as a "*complete and utter sham*" • , stating that:

*"Those who may be tempted in the future to make a dishonest claim in relation to fake holiday sickness, if they are investigated and brought to justice, whatever the circumstances of an individual, he or she must expect to receive an immediate custodial sentence".*

#### *Government response*

Mr Roberts and Ms Briton were sentenced on the same day that the Government announced a call for evidence from holiday companies of fraudulent holiday sickness claims. The document invites members of the public and relevant stakeholders to submit evidence of stated issues including the increase in low value personal injury claims following gastric illnesses allegedly suffered whilst on holiday. The Government will then use these responses to examine how it can best tackle the proliferation of fraudulent claims.

The call for evidence can be found [here](#).

It marks the start of a clear crackdown on the problem, which has resulted in some Spanish holiday resorts reportedly considering banning British tourists altogether.

In announcing the launch of the call for evidence, Boris Johnson stated that:

*"The recent rise in false claims against tour operators, partly fueled by unscrupulous touts, tarnishes the UK's reputation overseas. It is also hugely unfair to those who genuinely do become ill, who risk becoming victims of unjustified suspicion. This is the first step in fighting the scam holiday claim epidemic".*

Such comments have been received well by industry experts.

After the announcement of the call for evidence, the Association of British Travel Agents, ("Abta" •), commented that:

*"It is crucial that the government brings in new rules that control legal costs on holiday sickness claims as soon as possible, and we welcome the chance to be able to submit further evidence from our members to help crack down on these bogus claims" • .[2]*

## *Lessons learnt*

First and foremost, it is clear that the Government is committed to stamping out fraudulent holiday claims. Judge David Aubrey QC's statement that those found guilty of making fraudulent claims will receive custodial sentences, together with the Government's call for evidence, illustrates the strong stance to be taken in future cases.

This must also be viewed as part of the Government's initiative to intervene in and stamp out fraudulent behaviour generally. The prosecution comes four weeks after the announcement by the City of London Corporation of plans to build a new court centre dedicated to fraud as well as cyber crime.

Justice Minister Dominic Raab commented that the new court *"will build on UK legal services' unique comparative advantage, by leading the drive to tackle fraud and crack down on cyber-crime"* • .

Finally, the case provides two useful reminders. First, of private companies' willingness, particularly in the insurance sector, to investigate customer's social media accounts when assessing the legitimacy of a claim. Secondly, of the usefulness of private prosecutions of crimes which state prosecution services choose not, for whatever reason, to prosecute.

[1] <https://www.abi.org.uk/products-and-issues/topics-and-issues/fraud/>.

[2] <https://abta.com/news-and-views/news/abta-statement-in-response-to-the-governments-call-for-evidence-on-holiday>.

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