116 Brexit and Tourism

Philip Mead *

Abstract: Do English Claimants have access to rights under EU law after departure from the European Union (Brexit)? This article describes the possible consequences for cross-border litigation in the field of tourism and personal injury (covering package holiday claims; cross-border tort claims; road traffic accident claims; direct claims against insurers). The article briefly summarises how EU law will apply after exit from the EU, and describes the rules which will come into force on exit day in the areas under discussion.

* Barrister; 12 King's Bench Walk Chambers, London; mead@12kbw.co.uk. The author practises in the area of cross-border personal injury and has over twenty years of experience in cases involving the application of conflict of laws and European law principles.

Introduction

The purpose of this Article is to provide the reader with an overview of cross-border personal injury law in the context of the (possible? / probable?) departure of the United Kingdom from membership of the European Union (Brexit).

As it may have come to your attention, after a referendum in 2016 which delivered a result indicating there was a narrow majority (52/48) in favour of the UK leaving the EU, a subsequent General Election was held to obtain a general mandate for Parliament to legislate to leave the EU. That political mandate was not obtained in the terms sought by Prime Minister Theresa May such that the sovereign expression of the will of the people through Parliament at the subsequent General Election is arguably in conflict with the earlier expression of those who voted to leave. In addition it can be said that the referendum indicated an answer to the question of in or out; it did not answer the question of how to leave, or what relations should subsist on departure. There is therefore, at the moment of writing, political grid-lock which can be resolved either by revoking the Article 50 notification (no departure); acceptance of the current terms offered (or a variation thereof) in the Withdrawal Agreement (deal); or departure without a deal (no deal). If there is to be a deal, the present deal on offer having been declined three times in Parliament (and all indications are that a fourth vote against is imminent[1)]), it might be thought any such deal could only become law either as a result of another general election or a further confirmatory vote in a second referendum.

Putting aside the crystal ball, as a matter of legal fact, the UK Parliament has legislated to leave the EU. The current exit day, as amended, is 31 October 2019 at 23.00 [that is: midnight on 31 October for mainland Europe].[2)] See section 20 of the European Union (Withdrawal) Act 2018 as amended. This article will therefore sketch out what may occur on the basis that Parliament legislates to accept the current Withdrawal Agreement (or something similar: deal) or departs without a deal (no deal).

In analysing the response of the UK Government to Brexit it is perhaps useful to consider the different routes to harmonisation and the underlying reasons for European legislation. The most pressing reason for harmonisation amongst Member States will be where there is an interest at the European level which requires mutual recognition of the relevant standards in each Member State. Having a common system of rules requires there to be a common guarantee for enforcement and the establishment of a level-playing field. Such a system requires common standards in each Member State to function properly and a common system of oversight. Therefore, where a Member State leaves the club, such automatic reciprocity is broken unless there is express agreement upon departure and guarantees to support continued enforcement. An example of such a system would be the Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, namely Regulation 1215/2012.

A second less intensive form of harmonisation arises where the European Union has adopted and incorporated into European law a pre-existing international system of harmonisation: for example, the incorporation of the international transport conventions such as the Warsaw Convention or Athens Convention system into EU law. Thus, the United Kingdom was a party to those systems of regulation prior to the EU adopting the relevant Regulations.[3)] Membership of

1. Prime Minister May has since resigned when it became clear that a fourth vote was not going to succeed. An election is being held within the Conservative Party, the result of which the reader will know, but the author refuses to predict. The winner will not only be the Leader of the Conservative Party but also the new Prime Minister. Thus, despite the criticism that the EU lacks democracy, the choice of Prime Minister is determined by a ballot of the membership of a political party rather than the electorate.
2. That is, Halloween!
3. Regulation (EC) 2027/97 on air carrier liability in the event of accidents as amended; and Regulation (EC) 392/2009 on the liability of carriers of passengers by sea in the event of accidents.

the EU (or not) is not determinative. Other non-Member States are party to the international system of regulation. The change of status of the United Kingdom from Member State to third country does not undermine the system of harmonisation. The United Kingdom can therefore continue to implement and apply the relevant standards in domestic law without compromising the integrity of the regulatory system.

A third type of harmonisation concerns the situation where minimum standards have been applied across the single market. The relevant standards that apply in the relevant Member State do not require mutual recognition in other Member States, in particular where there is a broad margin of discretion granted to Member States when implementing the rules into domestic law.

A foreign tourist visiting the UK[4] may suffer personal injury in circumstances where any or all of the following European sourced rules could have application: the package travel directive; jurisdiction rules under Regulation 1215/2012; application of proper law rules under the Rome I and Rome II Regulations[5]; application of rules to be found in the now Consolidating Directive 2009/103 on the protection of victims suffering injury from a motor vehicle accident.

Introduction to the European Union (Withdrawal) Act 2018

The European Union (Withdrawal) Act 2018 is the Act of Parliament which specifies, in constitutional terms, how the UK proposes to terminate its membership of the European Union and how, as a matter of domestic law, it is proposed to continue applying (as appropriate) rules and regulations that had their origin in EU law. The 2018 Act provides on exit day that the European Communities Act 1972 shall be repealed (see section 1). However, EU derived domestic legislation will continue to have effect (section 2). Direct EU legislation which is in force immediately before exit day is incorporated into domestic law. Most importantly, this provision will apply to EU Regulations in their English language version (see section 3). In effect, as a matter of domestic law, there will be a mass transposition of EU law into domestic law (a grand cut and paste). As at exit day, the body of rules in EU law will be frozen in time and incorporated into English law.

Thus, the English Courts will not, after exit day, be bound by CJEU case law after exit day (see section 6(1)), but may "have regard" to post exit day case law (under section 6(2)), whereas retained EU law (which importantly includes EU derived domestic law under section 2) is to be interpreted in accordance with retained EU case law (that is, EU case law prior to exit day; see section 6(3)). In short, pre-exit day legislation will continue to be interpreted as before in accordance with principles under EU law applicable at the point of departure, whilst post exit day legislation will have regard to CJEU case law without being required to follow European canons of construction as a matter of course (that is not to say that the Courts will be precluded from doing so where appropriate).

Section 4 of the 2018 Act provides for a saving provision in relation to enforceable EU rights, thereby facilitating continuing resort to direct effect after departure in respect of rights previously recognised as at date of departure (see further section 4(2)(b) and Schedule 8, para 38).

The EU principle of supremacy does not apply to any enactment or rule of law passed on or after exit day (see section 5(1)), however that principle does apply on or after exit day to the interpretation of any enactment or rule passed before exit day (see section 5(2)).

Francovich claims[6] for damages are permissible in certain circumstances concerning facts and matters which occurred prior to exit day, with a time bar of two years after exit day (see Schedule 8, para 39(7)). Francovich claims are not permitted in relation to any matter occurring on or after exit day: see Schedule 1, para 4.

Like the Roman God Janus, therefore, lawyers may in the future be required to look both ways, forwards and backwards, depending on when the legislation was passed. Will this affect the day-to-day implementation of EU principles by the English Courts? Like a skier skiing down the piste who takes a different line, it is the author's view that to begin with there will be little divergence, but that over time, and as new Judges are appointed, the divergences will become more marked, with a preference for a "black-letter law" approach over a more flexible, purposive construction.

Package Travel Claims

Will the Package holiday market be affected? What will happen when Brits holidaying abroad on all-inclusive holidays suffer injury? Will foreign suppliers of services still be at risk as to English quantum and costs when the Claimants bring claims in the English courts? In the United Kingdom, the original Package Travel Directive 90/314/EEC was implemented into domestic law by The Package Travel, Package Holidays and Package Tours Regulations 1992. These Regulations imposed a liability on the tour operator to compensate the consumer for the improper performance of the obligations under the contract. The tour operator is held to be vicariously liable for any failures to perform the contract by third party suppliers of services in respect of the services contracted for as part of the holiday. Therefore, a Claimant has a claim for breach of contract in relation to express or implied terms of

> *There will be a mass transposition of EU law into domestic law.*

4. The UK is in fact three different jurisdictions: England and Wales; Scotland; and Northern Ireland. This article will concentrate on the law of England and Wales.
5. Regulation (EC) 864/2007 on the law applicable to non-contractual obligations (Rome II) and Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I).
6. That is, claims for damages against the State in respect of losses caused by the defective implementation of EU law.

Five-fold increase in food poisoning claims in relation to all-inclusive holidays.

the contract. In food poisoning cases, there is a term implied in any contract for the supply of goods (including food and drink) that the goods supplied are of satisfactory quality. In such cases, it is sufficient to prove that the food was contaminated and was supplied as part of the package.[7] In other cases where there is no express term it is likely that an injured Claimant will rely on an implied term that the supplier of services failed to exercise reasonable skill and care. Such claims depend on proof of the local standards that applied in resort (it cannot be said, for example that British standards for lifts can apply to a defective lift in Spain which caused injury).[8]

Once the UK has departed from the EU, it will be an issue for the UK to determine whether it wishes to continue with the high levels of protection contained in the Package Travel legislation. Despite the prospect of Brexit, the United Kingdom has in fact implemented the new Package Travel Directive 2015/2302 on package travel and linked travel arrangements into domestic law. See The Package Travel and Linked Travel Arrangements Regulations 2018.[9] The Regulations apply to holidays booked after 1 July 2018.

After the departure of the UK from the EU, although in theory the UK would have competence to repeal the Package Travel legislation, nothing has been suggested that this will take place. English consumers will therefore continue to sue their tour operators in their domestic forum by way of breach of contract claims governed by English law.
Foreign suppliers of services who are alleged to have provided defective services contracted for by the tour operator and part of the package holiday, will therefore continue to be subject to the risk of joinder in the English Courts as third parties to claims brought by injured Claimants against the tour operator. In so far as English law is more generous in terms of assessment and quantification of loss, there is therefore a possible continuing greater exposure for foreign suppliers and hotels to higher awards of compensation (and costs). Whether there is a deal or no deal, it is likely that the UK market for the provision of package travel will operate in the same way. The 2018 Regulations will continue in force as EU derived domestic law to which European principles of interpretation will apply.

Further the continuing propensity of English consumers to sue needs to be considered. In this respect, there is evidence that when the authorities clamped down on fraudulent claims in the road traffic accident sector (so-called "crash for cash" claims) many of the claims personnel responsible for encouraging abuses and fraudulent claims moved into the holiday claims area instead, giving rise to a five-fold increase in food poisoning claims in relation to all-inclusive holidays. Those abuses have led to a robust response by the travel industry and a change of climate since the leading case of Wood v TUI. As a result, many of the lower value food poisoning cases are now being fought out in the Courts by the Defendants with a significant success rate.

Conflict of laws: the Rome I and Rome II Regulations

Cross-border claims: will the European choice of law rules continue in force? Will the old common law rule on quantification of damages return to the law of the forum, namely English law? Will foreign Defendants be at risk? Presently, the Rome I and II Regulations regulate conflict of law rules on the identification of the proper law including for intra-UK conflicts where there is a choice involving England and Wales, Scotland and Northern Ireland. Particular rules have been passed to facilitate incorporation of the European Regulations into domestic law: see The Law Applicable to Contractual Obligations and Non-Contractual Obligations (Amendment etc.) (EU Exit) Regulations 2019 (SI 2019/834). These Regulations are due to come into force on exit day (regulation 1(1)). The Rome I and Rome II Regulations become retained EU law, part of domestic law. The EU conflict of law rules will continue to apply including in relation to intra-UK conflicts. Not unsurprisingly, there are some linguistic changes to reflect the fact that the UK is no longer a Member State. The central point remains however that the general system of regulation and particular rules remain unaltered. There is therefore no return to the antecedent rule of British private international law that assessment of damages were to be considered as procedural and therefore for the law of the forum. British conflict of law rules will therefore continue to be aligned with and to reflect the European system and tortious damages will be assessed in accordance with the proper law of the tort.

Accordingly, foreign tortfeasors and their insurers will still be able to rely on the foreseeable application of foreign law in relation to liability and the remedies available and the quantification of loss in cases imported into the British Courts.

Jurisdiction and Enforcement of Judgments

Will it be possible for English Claimants to import foreign accident claims into the English Courts in the future? Will foreign insurers continue to be liable under a direct right of action for English costs? Where can English Claimants sue when they have a direct right of action against a foreign insurer? Will there be a return to the previous rules on forum non conveniens (where the English Judges act as gatekeepers to determine the appropriateness of the litigation being continued before the English Courts)? Will an English Claimant be able

7. See the leading case of Wood v TUI Travel Plc (trading as First Choice) [2017] EWCA Civ 11; [2017] PIQR P8.
8. See the case law summarised in Lougheed v On The Beach Limited [2014] EWCA Civ 1538.
9. SI 2018/634.

to enforce a judgment on liability and costs? Article 67(1)(a) of the Withdrawal Agreement extends the provisions regarding jurisdiction of Regulation 1215/2012 for the duration of the transition period (currently foreseen as continuing to the end of 2020). In addition, Article 67(2)(a) makes provision for the recognition of judgments in legal proceedings instituted before the end of the transition period.

As is well-known, following the European case of Odenbreit, the right of injured Claimants to sue the liability insurer of the Defendant tortfeasor in the Courts of their own domicile has been frequently used in the English Courts, both in the road traffic context, and where foreign law permits, in the non-road traffic context. Foreign liability insurers are therefore exposed to claims under foreign law (which is normally (but not always) the proper law of the tort) in the English courts and to English costs rules which may be of orders of magnitude greater than that experienced in their own domestic Courts.

If there is no deal, English Claimants will lose the protection of both the jurisdiction provisions and the guarantee of enforcement under Regulation 1215/2012. The Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (SI 2019/479) establishes the framework for the relevant rules from exit day. Reference to the previous jurisdiction regimes provided for by the Brussels Convention and the Lugano Convention and implemented by the Civil Jurisdiction and Judgments Act 1982 are revoked. It is expressly provided that any rights, powers, liabilities etc. derived from the Brussels and Lugano Conventions will cease to be recognised and available in domestic law on exit day. The domestic Regulations expressly revoke retained direct EU legislation, including Regulations 44/2001 and 1215/2012.

The jurisdictional position set out in these rules have also been converted into prospective rules of Court by reference to the Civil Procedure Rules 1998 (as amended from time to time), which establishes the rules which practitioners apply on a day to day basis when conducting civil litigation in the English Courts. The Civil Procedure Rules 1998 (Amendment) (EU Exit) Regulations 2019 (SI 2019/521) establish the procedure rules which will apply and be in force from exit day. These rules foresee two fundamental changes to how litigation will be conducted in the future. As indicated in the preceding paragraph, the substantive rules of jurisdiction (and enforcement) will no longer be available for British Claimants when exercising any choice to bring proceedings before the English Courts. Therefore, in the context of cross-border tourism and tort claims, the European-sourced rules which permit English domiciled Claimants to bring claims in their own Courts where they are relying on a consumer contract, or a contract of employment, or claims relating to insurance, will no longer apply. English lawyers will not therefore, as a matter of course, be able in a no deal scenario to import foreign tort or contract law claims using those jurisdictional heads of claim.

Secondly, the basis upon which the future rules apply will change. Whilst English procedural law previously allowed for two different routes to establishing jurisdiction: those rules which applied largely (but not exclusively) to European-domiciled Defendants relying on European rules, and those rules which applied to Defendants from third States; as a result of the repeal of the European sourced rules, the only jurisdiction rules which will continue will be those that have applied to third State Defendants (namely, the common law gateways to jurisdiction). The common law system of jurisdiction has always required permission to serve out of the jurisdiction. Since service of a claim form establishes jurisdiction of the English courts, permission to serve out of the jurisdiction as a pre-requisite provides a police or gate-keeper function for the domestic Judge. The flip-side of this requirement is that the English Courts will only exercise jurisdiction over a case, and thereby grant permission to serve out, where the English Courts are considered to be the proper Courts to hear the claim.[10] By this route, the English courts apply the principles of forum conveniens.

The effect of this change can be considered by reference to the leading European case of Owusu (Case C-281/02, [2005]). The European Court of Justice held in this case[11] that it was incompatible with the Brussels Convention, Article 2, for the Courts of a Contracting State to exercise a discretion to decline to hear a claim on forum non conveniens grounds that a foreign court was the more appropriate forum to hear the claim. This rule applied in the instant case even where the litigation had no connecting factors with the Courts of another Contracting State. The facts of the Owusu case were that the Claimant booked a holiday villa with the English domiciled Defendant. The villa was located in Jamaica. Use of the villa included access to the adjacent beach owned and/or occupied by the Jamaican Defendants. The Claimant suffered catastrophic injury when diving into the sea, such injury being caused, it was claimed, by a hidden sandbank for which no warnings had been given. The first instance Judge would have found that the proper Courts to hear and try the claim against the Defendants (both English and Jamaican) would have been in Jamaica, but that he was precluded from so finding because of the rule of European law establishing jurisdiction as against the English domiciled Defendant. In the circumstances that it was necessary to hear the claim against the English Defendant, the Judge ruled that it was necessary to avoid the risk of irreconcilable judgments and held that the claim against the Jamaican Defendants should also proceed in the English Courts. The Defendants appealed against this ruling, whereupon the Court of Appeal made a reference for a preliminary ruling to the European Court of Justice.

> *Two fundamental changes to how litigation will be conducted in the future.*

10. CPR 6.37(3): "The court will not give permission unless satisfied that England and Wales is the proper place in which to bring a claim."
11. The author was instructed on behalf of the Claimant.

A return to the Brussels Convention as a Treaty mechanism for enforcement is not possible.

As a result of the ruling by the European Court in the Owusu case, the English Courts have exercised jurisdiction over tort claims against English domiciled Defendants. English Defendants have been answerable therefore for any tortious conduct wherever committed. This rule has had particular application in relation to the liability of parent companies who have been found responsible for the conduct of their foreign subsidiaries.

The re-introduction of the rule of forum conveniens will provide a control mechanism for the English Courts to rule that litigation which has a close connection with another jurisdiction should not be brought before the English Courts but should be stayed. As a result, foreign tort claims against English domiciled Defendants may not always be permitted where all the circumstances of the case indicate that the claim is not most closely connected to England. Conversely, accidents in the UK involving foreign Claimants are likely to be permitted where English law is the proper law of the tort. In this respect, the English courts place much greater weight on the place of the tort and the identity of the proper law of the tort than on the legal certainty for the Defendant in being answerable for any claims in the Defendant's own courts.
It is therefore a foreseeable consequence of no deal that the current practice of English lawyers importing foreign claims involving English domiciled injured parties in particular against foreign liability insurers may abate.

A further consequence of the revocation of Regulation 1215/2012 is that the machinery for enforcement of judgments contained in that Regulation will also disappear. Obviously, with the UK exit from the system of mutual rules or enforcement, there can be no basis for the UK to be party to continuing obligations should there be no deal with the EU. At the moment, the Withdrawal Agreement foresees a limited extension of the Brussels system pending a more comprehensive agreement between the United Kingdom and the EU. Politically, that prospect appears remote. In relation to some Member States but not others, there are pre-existing bilateral Treaties whose provisions may be resurrected under domestic law (for example, there is a bi-lateral agreement between the United Kingdom and the Netherlands which predates the 1968 Brussels Convention which remains in force). However, the implementing 2019 Jurisdiction Regulations make it clear that a return to the Brussels Convention as a Treaty mechanism for enforcement is not possible.

Road Traffic Accidents

What will happen to the direct right of action against road traffic liability insurers? For foreign victims injured in the UK? For English victims injured in the European Economic area? Will the system of information exchange continue? Will claims representatives continue to act on behalf of foreign insurers? What happens to claims against the English Motor Insurers Bureau in relation to accidents caused by foreign uninsured vehicles or untraced vehicles? Accident victims may wish to bring proceedings in the English Courts either against an insurer or against the Compensation Body (namely the Motor Insurers' Bureau). Until the introduction of the right to bring a direct right of action against an insurer under the Fourth Motor Insurance Directive 2000/26/EC, litigation in relation to road traffic accidents had always required a Claimant to sue the individual tortfeasor (even where that person was insured). That position has changed as a result of the introduction of the direct right of action against the insurer by the European Communities (Rights against Insurers) Regulations 2002.

Unfortunately, the 2002 Regulations only apply to accidents on a road or other public place in the United Kingdom. Therefore, accidents in another Member State caused by a UK insured vehicle are not within the scope of the direct right of action against the UK insurer under English law. It is therefore necessary for a foreign injured Claimant involved in an accident outside the United Kingdom to bring a claim against the UK insurer by reference to the law of the place of the accident (applying Article 18 of Rome II).

The second deficiency in the 2002 Regulations is that the reference to an insured person covers persons whose vehicle has been insured in accordance with the provisions of the Road Traffic Act 1988 which applies to English insurers members of the Motor Insurers' Bureau. Thus, where there is an English accident caused by a foreign vehicle insured by an EU insurer, again the domestic right to claim against the insurer does not apply. Resort in this example would need to be made to the law of the contract of insurance to facilitate a claim against the insurer. The underlying civil liability would arise by reference to the proper law of the tort, but enforcement of that liability against the insurer would be by reference to the direct right under the law of the insurance contract.

A Dutch claimant would still be able to exercise their rights under Article 18 of the Rome II Regulation after exit by relying on the foreign direct right of action. If there is no deal, then such a Claimant would, in my view, have little difficulty in establishing that the English Courts would be the proper place to bring a claim if the accident occurred in England (and the proper law of the tort was English). However, it would be more difficult to establish that the English courts were the proper forum if the accident occurred abroad and the underlying right of action and the proper law were foreign in circumstances where the only real connecting factor with England and Wales was the domicile of the insurer.
At the time of writing, it is not understood that the 2002 Regulations will change after Brexit.

European principles of interpretation will therefore continue to apply to the direct right to claim (in so far as it exists).

A second set of English rules on cross-border motor vehicle claims are contained in the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003 (SI 2003/37). These Regulations govern the right in England and Wales to bring a claim against the Compensation Body (the Motor Insurers' Bureau (MIB)) in relation to foreign accidents where there is an uninsured or untraced vehicle. Currently, the right for an injured Claimant to claim against the English MIB involves in practice the importation of a foreign accident claims into the English Courts, in respect of which there is then a right over of the MIB to pass any liability on to the Guarantee Fund of the place of the accident. Such claims, under English law, arise as a result of the 2003 Regulations, however the underlying tortious liability to compensate is determined by reference to the proper law of the tort (normally the law of the place of the accident).[12] Compensation is therefore assessed in accordance with the proper law of the tort.

The Motor Vehicles (Compulsory Insurance) (Amendment etc.) (EU Exit) Regulations 2019 come into force on exit day and establish the new system for cross-border claims after departure. The present system of the provision of information is preserved in so far as the Motor Insurers' Information Centre (MIIC) will continue to carry out its functions. The obligation on the information centre to supply information will continue in relation to UK accidents caused by EEA vehicles and EEA accidents caused by UK vehicles. The duty to supply the name and address of the claims representative of the foreign insurer is removed.

The system of foreign insurer claims representatives is dismantled. Reference under the 2003 Regulations to the second motor insurance directive, foreign compensation bodies and the MIB are all removed. The right to claim against the MIB acting in its capacity of Compensation Body is removed as at exit day save for claims where proceedings have been issued. There is therefore the real prospect of UK-domiciled injured Claimants who were subject to a European accident before exit day not being protected after exit day. The upshot of the removal of these rights will be that English victims of foreign accidents caused by uninsured or untraced vehicles will need to resort to claims against the relevant Guarantee Funds in the country of the accident. A visiting Dutch tourist would still be able to claim against the MIB acting in its capacity of Guarantee Fund, just as an English victim of an uninsured or untraced vehicle after an English accident. However, the right to claim in the Netherlands will no longer be available.

As a consequence of the departure of the UK from the European Union, the UK will be a third country for the purposes of the free movement of persons and vehicles. Therefore, English drivers will need to have a recognised international driving licence. They will need to have evidence of insurance cover through the Green Card System. In that regard, the United Kingdom will be the subject of the same obligations and settlement procedures under the Green Card system as say vehicles registered in Ukraine or Turkey, where English registered vehicles are involved in accidents within the EEA (see Articles 7 and 8 of Directive 2009/103/EC).

Conclusions

One of the most controversial elements of the Withdrawal Agreement concerns the regulation of the border between Northern Ireland and the Republic of Ireland (the so-called backstop). The removal of the hard-border and the desire not to reintroduce border crossings on the one hand is confronted by the complex reality of what happens when you interrupt frictionless trade and free movement. Free movement of vehicles and the need for insurance is a case-study in point. The UK departing from the EU puts at risk any system of regulation which depends upon mutual recognition and enforcement. Areas involving minimum standards of harmonisation such as package travel will be able to continue without much disturbance. Areas where there was international regulation prior to EU harmonisation provide a safety net by a return to the rules that existed prior to EU membership. The most difficult areas to replicate are those areas of specifically European harmonisation which depend on a system of mutual trust and confidence. If the United Kingdom chooses to align its standards with its European neighbours, such a system will not bear fruit unless there is a mechanism to guarantee such levels of protection on a trans-national basis. On the other hand, if Article 50 is revoked, none of this will come to pass.

The right to claim in the Netherlands will no longer be available.

12. See the case of Moreno v Motor Insurers' Bureau [2016] UKSC 52.