

# businesscompanion

## trading standards law explained

### Introduction

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The introduction of the Package Travel and Linked Travel Arrangements Regulations 2018 (2018 PTRs) presents major changes for businesses. Package holidays and Linked Travel Arrangements are often complex combinations of travel services which include transport and accommodation but may also include other services such as car hire and significant 'other tourist services' such as excursions. Different service providers, for example airlines and hotels, are often involved and a problem with the delivery of one service may affect the delivery of the others.

One of the major problems is the need for businesses to accept that separate purchases of travel services will come under the new rules (for example in the case of a traveller visiting a high street travel Agent or online travel Agent, paying for a flight and, without leaving the travel Agent or moving to another website, deciding to book a hotel to 'link' with the flight).

To understand the extent of the problem I researched the level of complaints regarding holidays and travel (obtaining figures from the trading standards first tier advice service, Citizens Advice). I compared complaints from August 1, 2017 to August 1, 2018 (up to the introduction of the new PTRs) and there were **10,006 complaints** regarding holidays and travel. From August 1, 2018 to August 1, 2019 (12 months from implementation of the new rules) there were **8,137 complaints** - a reduction of **1,869**.

The majority of the complaints concerned problems from both businesses and travellers with the interpretation of the new PTRs (specifically, package holidays abroad, all-inclusive packages, cruises and Linked Travel Arrangements). There was some initial misunderstanding between the 2018 PTRs and the Consumer Protection from Unfair Trading Regulations as regards misleading pre-contract information provision, Linked Travel Arrangement descriptions and online transactions.

The purpose of this booklet is to provide key points and guidance for business in understanding the requirements of the 2018 PTRs, including case studies of real-life examples where the new rules apply.

The new rules highlight offences which could include failure to provide pre-contractual information and the information required when providing the confirmation invoice; failure to provide insolvency protection for packages or Linked Travel Arrangements; providing false information to release monies held on trust for

insolvency cover; and, in regard to Linked Travel Arrangements, failing to put in place insolvency cover or provide pre-contractual information.

Many of the PTR's 2018 requirements will be familiar to those used to organising package holidays. However, the definitions and scope of the requirements mean that it is likely that many more travel companies will have to ensure that their business systems and practices take account of the PTR's 2018. The three key areas to consider are:

- Businesses will need to put in place processes and procedures when making sales in Agencies, on the telephone or on their website
- Businesses will need to provide security for the money they take from consumers by holding an Air Travel Organisers Licence or by providing a bond or insurance policy or by holding the money in a trust account.
- Businesses will need to review contracts both with their customers and their suppliers.

## Definitions

### 'Package'

i. A package is created when travel services are combined by one trader and sold under a single contract.

These types of packages are traditional packages BUT unlike the previous regulations, there is no mention that the packages must be 'pre-arranged' and they will include 'tailor-made holidays'.

Or where those services are:

ii. sold in a single booking process.

A package is created when a traveller has selected from the same point of sale two or more travel services and then agrees to pay for them within the same booking process (this is a 'shopping basket' model where the point of sale could be high street travel Agents, websites or telephone sales).

iii. sold at an inclusive/total price.

iv. sold as a 'package'; (or under a similar term).

v. combined after the sale of the package allowing subsequent choice (gift-box style holidays).

This type of package is a difficult concept. In our view, it relates to arrangements where a trader sells a package that allows a traveller to pick and choose different travel services after they have concluded the contract.

vi. sold through a linked online booking process, irrespective of whether the traveller concludes separate contracts.

This includes situations where a traveller purchases different travel services for the same trip through a linked online booking process where the traveller's name, payment details and email address are sent from the first trader they purchase from, to a targeted second trader and a contract is concluded with the second trader no longer than 24 hours after the first service was purchased.

This type of package is created when a traveller goes to e.g. an airline website to buy a flight and on this website is a link to an accommodation provider where the traveller's name, payment details and email address appear. As long as the traveller purchases within a 24-hour period it will become a package and the airline will become the Organiser.

### **'Travel service'**

In order to create a package, you need to sell two or more different travel services, from the four below:

- i. Carriage of passengers. This includes flights, trains and coaches.
- ii. Accommodation. It is important to note that accommodation that is intrinsically part of carriage of passengers is not in scope. For instance, a ticket on a sleeper train where the purpose is to get from A to B and staying on board is a necessary part of that journey, would not constitute a package.
- iii. Motor vehicle hire. This includes car and motorcycle hire.
- iv. Any other tourist services. These are services that are not intrinsically part of the carriage of passengers, accommodation or motor vehicle hire but make up a significant part of the package. For example, a traveller books a golf break with a hotel or travel Organiser that includes a pre-booking for round(s) of golf, as well as the accommodation. This could be a package. However, a hotel booking for accommodation at a hotel that happens to have a golf course as a facility is not in itself a package. The golf course is simply a facility.

### **'Linked travel arrangements'**

There are two different types of Linked Travel Arrangements envisaged by the 2018 PTRs:

- i. Separate purchases made during a single visit to a shop (e.g. travel Agent where the traveller selects and pays for a hotel and then, without leaving the Agent, pays separately for a flight) or website (e.g. customer goes onto a website, selects and pays for a flight, and then while he's still on the website, he then goes and selects and pays for a hotel).
- ii. Then on a website, after the traveller has purchased one element, they are 'targeted' with a cross-sell to another trader, and the traveller buys from that other trader within 24 hours (e.g. an airline sells a customer a flight. In the booking confirmation email, the airline invites them to book a hotel room with Booking.com to go with their flight. The customer clicks on the link and books a hotel within 24 hours of booking the flight).

### **'The Consumer Rights Act 2015'**

This piece of law requires that services provided by traders to consumers should be performed in accordance with the contract, with reasonable care and skill, at a reasonable price. As a general rule, if something goes wrong with the supply of holidays and travel, consumers can claim their direct losses, but they cannot claim compensation for distress and inconvenience. However, the law makes an exception for some types of contract, including contracts for package travel. Therefore, as the purpose of a holiday is usually to provide enjoyment and relaxation, a consumer may be able to claim compensation for

inconvenience and distress, on top of a refund and any other losses, if things go wrong.

## **'The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)'**

These regulations prohibit 31 specific practices that are always considered to be unfair and create further offences for aggressive practices. They prohibit 'misleading actions' and 'misleading omissions'; that cause, or are likely to cause, the average consumer to take a 'transactional decision' they would not have taken otherwise. They apply to commercial practices relating to package holidays and travel services (including websites) before, during and after a contract is made.

Effectively the CPRs prohibit trading practices that are unfair to consumers. There are four different types of practices to consider:

- practices prohibited in all circumstances;
- misleading actions and omissions;
- aggressive practices;
- general duty not to trade unfairly.

For the last three practice types above it is necessary to show that the action of the trader has an effect (or is likely to have an effect) on the actions of the consumer in making a booking for a holiday. The test looks at the effect (or likely effect) on the average consumer, which means there is no need for evidence about how any particular individual was affected. As stated above, there are 31 of these 'banned' practices in the regulations.

### **'Misleading availability'**

- Bait advertising (or 'bait and switch');. This is where a trader misleads a consumer into believing they can buy a package holiday or travel service at a low price when the trader is aware that they do not have reasonable stock available or are not able to supply at that price; this is also where the trader attempts to 'up-sell' to a higher priced product.
- Falsely stating that a product is only available for a very limited time in order to make the consumer make an immediate decision.

An example of a breach of the law would be where an advertised sale of package holidays stated a finishing date for the offer, but the sale was continued after the advertised finishing date as few sales had been made.

An example of other specific banned practices are added after 'Misleading actions & omissions' below.

### **'Misleading actions & omissions'**

The CPRs prohibit 'misleading actions' and 'misleading omissions' that cause, or are likely to cause, the average consumer to take a different transactional decision. This does not only relate to pre-shopping but includes after-sales.

'Misleading actions' happen when a trader provides false information about important matters, such as the main characteristics of the product (even if the information is factually correct), or presents the product in such a way as to be likely to deceive the consumer as to these matters.

An example of a breach of the law would be where flight prices are advertised but they do not include Government taxes.

'Misleading omissions' happen when a trader gives insufficient information about a holiday or travel service. It is a breach of the CPRs to fail to give consumers the information they need to make an informed choice in relation to a holiday or travel service if this would cause the average consumer to take a different decision.

An example of a breach of the law is where a hotel advertises that they provide air conditioning in every bedroom but there is a delay in installing the air conditioning and it is not available throughout the holiday season.

Some other Banned Practices are listed below:

- i. Claiming to be a signatory to a code of conduct when the trader is not, e.g. claiming compliance with the ABTA Code of Conduct without being a member.
- ii. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation, e.g. using the ABTA logo.
- iii. Claiming a code of conduct as an endorsement from a public or other body which it does not have.
- iv. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not;  
or making such a claim without complying with the terms of the approval, endorsement or authorisation, e.g. reference to ABTA.
- v. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

It is a breach of the CPR's to:

- omit material information
- hide material information
- provide material information in a manner that is unclear, unintelligible, ambiguous or untimely.

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