businesscompanion
trading standards law explained

Part 4. Advertising and pricing requirements

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Advertising and pricing requirements under the PTRs

Websites or brochures displaying package holidays are required to indicate the price of each package in a legible, comprehensive and accurate manner. All price indications, including those on websites, must make clear the basis for the price shown - for example, departure date or standard of accommodation.

You must include any non-optional extra charges in the basic price and must not show them as additions, unless they are only payable by some travellers - for example, single room supplements.

If the price displayed is not a fixed offer but liable to change before the traveller makes a booking, this must be made clear wherever it applies - for example, by a box or annotation on each page of the brochure or web page. The way in which the price will be calculated must be clearly explained, and the traveller directed to where in the brochure or website the information is available.

If you reserve the right to increase prices after travellers have made their booking, this must likewise be consistently brought to the traveller's attention and the traveller directed to where in the brochure or website the information is available.

The Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs) restrict the ability of the organiser to increase prices after the traveller has booked. Therefore, organisers may only alter the price of a package travel contract if that possibility has been reserved in the contract, and relates to one or more of these three scenarios:

- increase in transport costs due to changes in fuel prices or other power sources
- changes in taxes or fees on travel services imposed by third parties not involved in performance of the package - tourist taxes, for example
- exchange rates relevant to the package

If a right is reserved to change the price for the reasons above, the contract must also allow for a price reduction if the same factors lead to cost reductions for the organiser.

Furthermore, the price cannot be changed unless the organiser notifies the traveller no less than 20 days before the start of the package. Price increases over 8% of the original package price are considered a

significant change to the package and trigger the traveller's right to cancel the contract without a cancellation fee.

The Digital Markets, Competition and Consumers Act 2024 (DMCCA) prohibits 'misleading actions' and 'misleading omissions' that are likely to cause the average consumer to take a 'transactional decision' that they would not have taken otherwise, despite it being in the same time period.

Advertisers should not provide information in a manner that is unclear or ambiguous. Trading Standards services have advised a number of larger organisers that their advertising should not falsely state that a holiday price will only be available for a very limited time, in order to elicit an immediate decision.

Drip pricing

The practice often referred to as 'drip pricing' is covered by the DMCCA. The total price of the product (including mandatory fees, taxes and charges) must be given to the consumer or, if this cannot be calculated in advance, how the total price will be calculated (the aim is to prevent an initial price being shown, which is then increased by the addition of non-optional charges).

Drip pricing occurs with online sales, where a trader advertises a low price and then adds mandatory charges later in the booking. For example:

- **headline price.** At the beginning of the booking process the trader advertises a headline price. This initial price captures the consumer's interest, often appearing deceptively low
- **additional fees.** As the consumer proceeds with the purchase, mandatory additional fees or charges are disclosed or 'dripped'
- **objective.** The objective of drip pricing is to attract consumers based on the headline price while delaying the full disclosure of the true final price

Examples of drip pricing include:

- airlines adding baggage and seat selection fees
- hotels adding Wi-Fi, parking and resort fees at the last minute
- Airbnb listings without cleaning fees, service fees and taxes
- mandatory tourist taxes not being included

For example, one luxury resort chain offered a seven-night all-inclusive break to Jamaica for £1,465 per person in its summer sale. 'Save up to 60% … Hurry! Only one day left,' the advert read. However, the day after the 'sale' ended, the price dropped by £50 per person - and continued to run for another week - so there was no need for consumers to hurry after all, as the business added another seven days to the countdown clock.

Another company offered seven nights at a Florida hotel from £792 per person if booked by 17 August. The day after the sale, the same dates had dropped to £677 per person, which was a £230 saving for two people sharing.

Further information on drip pricing can be found in *Unfair Commercial Practices: Price Transparency* (CMA209), which has been produced by the Competition and Markets Authority (CMA).

Availability of advertised prices

The next important element is the availability of the advertised prices.

There are a number of requirements for those who advertise holiday prices. The DMCCA specifies that

price promotions must not contain false information about the price.

The following are examples that may breach this requirement:

- advertising a price promotion for a product that is not in fact available at the advertised price
- comparing your current price to a reference price that is not genuine. For example, price promotions that aim to demonstrate good value by referring to another, typically higher, price

Examples of reference pricing are:

- 'was / now' prices, which compare an advertised price to a price the trader has previously charged for the product
- after-promotion prices or introductory prices, which compare the current advertised price to a price the trader intends to charge in the future
- comparing your own price to the higher price of a competitor but presenting the higher price as your own previous price
- excluding a compulsory charge from your headline price
- claiming a discount that is not in fact given to the traveller
- claiming a discount for all your holidays when all holidays are not in fact included in the offer - for example, '10% off all package holidays booked before end of September' when holidays to Spain are excluded. In this particular example, Trading Standards services would need to ensure that the advert was not misleading and we would enforce the rules of the DMCCA

If holidays are advertised at a 'from' price, the guidance from the Department for Business, Innovation and Skills (a predecessor of the Department for Business and Trade) is that there must be a significant number of holidays available at this price. Previously, brochure prices were able to be set where there were charter flights, as flight prices rarely changed. Now package prices are based upon scheduled flights and hotel rooms, where prices may change right up to the point of departure.

Investigations have revealed that hotel and flight prices may also change, depending on the popularity of the hotel and flight. For example, 'cookies', recognising when travellers request prices on one website, then search other sites to compare; when returning to the original website, the price is often higher as it recognises the previous enquiry.

It is very difficult to know how genuine a 'from' price can be. Operators will often not know the package price almost until departure.

In advising organisers regarding price promotions, Trading Standards services always insist that the advert must carry the statement that the holidays are always subject to availability.

We are also aware that some organisers advertising pricing promotions online like to highlight their prices in 'real time availability'. There is nothing incorrect with this type of advertising as long as there is a clear statement as to the length of time that these prices are available. The examples below show how travellers can be confused by the wording in some price promotions, specifically concerning the amount of availability at the advertised price.

The ASA's website provides more advice on price promotions.

Case study: significant proportions

These mock adverts give you an example of how confusion with advertising can sometimes cause problems for travellers.

Sample advert text:

Fantastic fares to St Malo!
Save £££s by travelling to St Malo with us!
*From **£235***
Car + 2 return!

There must be a 'significant proportion' at this price.

Sample advert text:

Enjoy a break in France
Great value 4-day breaks this Autumn!
£175
Car + 2 return!

All the services must be at this price.

Sample advert text:

4 Nights in Jersey
At our 4 waterfront hotel*
*From only **£299** per person*

There must be a 'significant proportion' at this price.

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