businesscompanion
trading standards law explained

Part 1. Package holidays

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Do you organise and sell packages?

Package holidays must have insolvency protection to protect travellers' money.

Thomas Cook, the world's oldest tour operator, ceased trading on 23 September 2019, after 178 years of selling holidays. An estimated 600,000 travellers needed to be repatriated when the collapse happened.

The law states that a traveller's holiday must be protected if it is a package holiday or linked travel arrangement. ATOL is a UK financial protection scheme that protects flight-inclusive package holidays sold by travel businesses based in the UK. The scheme also applies to some flight bookings, usually those where travellers book flights (including UK domestic flights) but do not receive tickets immediately.

ATOL was introduced in 1973, as the popularity of overseas holidays grew. After a number of high-profile travel business failures left people stranded overseas, the UK Government realised travellers required protection when their travel providers fell into difficulties. ATOL currently protects around 20 million holidaymakers and travellers each year. If a package holiday organiser, online / high street agent or airline goes out of business, the following information may apply to you, depending on your business model relationship.

Flight-based ATOL package holidays

If travellers have booked an ATOL-protected package, they will receive an ATOL certificate from the seller. If the seller then subsequently ceased to trade, the traveller must receive a refund if they haven't travelled, or be repatriated if they are on the package holiday. For more information on ATOL protection, the traveller should be referred to the Civil Aviation Authority (CAA) website.

ATOL-protected flight only

If travellers have booked an ATOL protected flight with an airline that ceases to operate, the traveller should also visit the CAA website for details of refunds and repatriation.

High street / retail sales

Where you are the contracted organiser for bookings taken by a travel agent that goes out of business, it is your responsibility to continue to provide the holiday that was booked.

Non-flight packages and LTAs

Where you have booked non-flight packages with an organiser that ceases to operate, these sales must be protected. Travellers will need to submit a claim for a refund to whoever provided the protection (which must be by a bond, insurance or trust account). If the traveller is already on holiday, in most cases the package holiday should continue as normal (LTAs are covered later in the guidance).

Single-element sales (such as flight-only or accommodation-only)

Where single-element sales have been booked, such as accommodation-only with an organiser / travel agent or online travel agent that ceases to operate, these sales are unlikely to be protected.

Case study: first PTRs prosecution

On 3 December 2021, Anthony Taylor of TT Tours, a Wolverhampton Coach Operator, who tricked hundreds of pensioners out of their holidays and pocketed their money, was jailed for four years at Wolverhampton Crown Court; this was the first such prosecution under the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs). Taylor took £65,000 from elderly customers to fund a lavish lifestyle including trips to five-star hotels in London, gambling, restaurants and payments to a girlfriend. He pleaded guilty to fraudulent trading and breaches of the PTRs and the Consumer Protection from Unfair Trading Regulations 2008 (this is the legislation that was replaced by the Digital Markets, Competition and Consumers Act 2024 (DMCCA)).

Taylor, who operated from a stall at Bilston Indoor Market, had targeted senior citizens' clubs to promote a five-day coach holiday to Torquay, which included travel, hotel, five-course evening meal, free evening bar and excursions for £99. The hotels in Torquay which had allegedly been booked by Taylor never received such bookings and had never heard of him or TT Tours.

300 customers had booked on to the trip, which was due to depart on 17 February 2020. The unwitting victims only discovered they had been duped when they turned up with their suitcases and no coaches ever arrived to collect them.

TT Tours had never filed any accounts and had no business bank account. All of the customers' money, paid mainly via cash, cheque or transfer, went straight into Taylor's personal bank account.

Flight-inclusive package holidays and ATOL protection

If a travel business with an ATOL ceases trading, the ATOL scheme protects travellers who had booked flight-inclusive holidays with the company. It supports travellers currently abroad and provides financial reimbursement for the cost of replacing parts of an ATOL protected package.

The scheme is designed to reassure travellers that their money is safe and will provide assistance in the event of a travel business failure. For more information on ATOL protection visit the CAA website.

There are three insolvency protection options that the PTRs permit organisers to use for **non-flight package holidays and LTAs**:

- bonding
- insurance
- trust account

Bonding

To use the bonding option a trader must be a member of an approved body (approved by the Department for Business and Trade), which oversees the bonding process to ensure that the bond is at an adequate level to meet insolvency requirements.

The bonds must not exceed a period of 18 months and must be a sum that covers whichever is the smaller of the following:

- the maximum amount of payments the organiser expects to hold at one time for travel packages still to be performed
- not less than 25% of all payments the organiser expects for travel packages in the 12-month period from the start of the bond

Alternatively, if the approved body has a reserve fund or insurance to cover any shortfall in bond cover, the sum must cover whichever is the smaller of the following:

- no less than 10% of such payments
- the maximum amount of payments the organiser expects to hold at one time for travel packages still to be performed

In the case of packages that might involve repatriation costs, the bond must also incorporate such additional sum as the organiser may reasonably be expected to cover and, if necessary, accommodation for the traveller prior to repatriation.

The Department for Business and Trade has approved three bodies to provide bonding. These approved bodies will ensure that a package travel organiser's bond meets the insolvency requirements.

The approved bodies are:

- ABTA
- ABTOT (The Association of Bonded Travel Organisers Trust), which also runs the Bonded Coach Holidays (BCH) scheme
- AITO Financial Protection Services Ltd

Insurance

The organiser can take out one or more insurance policies that recognise travellers as the insured persons and therefore pay direct to the travellers in the event of insolvency. Organisers must ensure that any insurance policy that they secure is not voided due to negligence or a breach of condition on their part. For instance, we are aware that ABTA makes it a condition for any underwriters on their approved list not to reject any claim made by travellers or withhold payment under the policy to any travellers (who can prove a loss) due to any breach of the terms, conditions or covenants of the policy by the relevant package organiser or facilitator of an LTA. This is considered to be good practice.

Trust account

This option requires all money paid by the traveller to be held by an independent trustee until the contract has been performed. The independent trustee can pass the money to the organiser only when they provide evidence that the contract has been fulfilled or if evidence is provided that the organiser has repaid a portion of the money to the traveller or the money has been forfeited on cancellation by the traveller.

The costs of administering the trust account must be paid for by the organiser. If the organiser is providing a package that includes the carriage of passengers, they must have insurance in place to cover repatriation and, if necessary, accommodation for the traveller prior to repatriation.

For more detailed information on trust accounts, please see the 'Monies in trust' section of the Business Companion guide 'Package travel and holidays'.

Organisers not established in the UK that sell or offer package holidays for sale in the UK must comply with the UK insolvency protection requirements as stated above. In addition, UK established travel agents (retailers) that sell package holidays combined by organisers outside of the UK are required to take responsibility for the performance of the package and provide insolvency cover, unless they can show that the trader already complies with these parts of the PTRs.

Exemptions

The guide so far has covered the requirement in the PTRs that states package holidays must be protected. The requirements are for flight-inclusive package holidays and non-flight package holidays or LTAs. There are, however, three situations stated in the PTRs that do not require any protection by businesses. These are:

- package holidays and LTAs that last less than 24 hours, unless overnight accommodation was included
- package holidays and LTAs that are organised occasionally, on a not-for-profit basis and for a limited group of travellers, such as a one-off trip arranged by a church for its members. This would apply only to the not-for-profit organisation itself and not to an organiser serving that group or market on a commercial basis

- business travel packages and LTAs will be exempted, unless they are purchased from 'consumer-based' providers (for example, high street travel agencies)

Descriptions

Trading Standards services have recently been advising businesses on the various forms of advertising their package holidays.

In one advertisement for a package holiday a trader stated that "verbal communication falls outside the scope of the Package Travel and Linked Travel Arrangements Regulations 2018". This was incorrect. Verbal communication can be misleading and could be a breach of the DMCCA.

The law states that if the description could mislead an 'average consumer', action could be taken.

The trader also claimed that "social media descriptions fall outside the Package Travel and Linked Travel Arrangements Regulations 2018". Again, this is incorrect and certain package holiday claims are being investigated.

A very recent issue has been the sale by high street and online travel agents of a 'super package' (or 'package plus') and whether the agent would have to provide protection. A super package is where a travel agent sells a package holiday as a retail agent, but at the same time sells an additional travel service. For example, a traveller may well ask for airport accommodation to be booked alongside the package holiday, perhaps because of an early flight. Similarly, the traveller might ask for transport to be arranged from their home to the point of departure of a package (cruise).

The travel agent will sell the package and the additional travel service as a retail agent. The organiser of the package will not change and will be responsible for all the elements making up the package. Similarly, the airport accommodation provider (for the early flight) and transport provider for the trip to the port to pick up the cruise ship will be responsible for those elements only.

If the travel agent was to be the organiser of this super package, the consequences for the travel agent will become unrealistic and add to the confusion for travellers.

There are clearly four travel services defined in the PTRs and 'package' is not stated as a travel service.

In addition, the PTRs contain extensive pre-booking information requirements on both the organiser and the retailer. The traveller should therefore be in no doubt as to what the package does and does not contain.

It is likely that agents will need to demonstrate that the traveller was informed about which components were included in the package, which were not, and the status of the various parties in the sale. For example, the identity of the tour operator, the single component supplier and the status of the agent.

The PTRs contain a 'legal right of redress' for package holiday organisers under regulation 29, which allows them to bring a claim against a third party that has done something that triggers a liability for the organiser to the traveller. For example, cancelled flights that lead to a refund of a flight-inclusive package.

In the recent case of *On The Beach v Ryanair* [2023], the High Court awarded On The Beach (an online travel agent) £2 million. On The Beach claimed that it had to refund its customers for cancelled flights, and that it never received the money back from Ryanair. A similar case with the same amount awarded is *Travel Republic v Ryanair* [2023].

'Cease and desist' letters were mentioned earlier in the guidance and can be used to help prevent scammers from infringing your intellectual property rights.

One scammer had copied a UK tour operator's website and added one letter to the URL (internet address). When you clicked on a link to it, you landed on a page that looked exactly like the operator's website, displaying, illegally, the logos of ATOL and ABTA.

Another example was a scammer using another organiser's logo. The scam was offering top-end travel services and a cease-and-desist letter was sent by the operator, and the letter worked.

Although a cease-and-desist letter has no legal force, it can cause the scammer to stop the infringing behaviour (especially if they are not a scammer as such, and did not know they were breaching the operator's intellectual property rights).

Case study: social media

This case study concerns the growing trend of package holidays being sold on major social network sites by 'homeworkers' who do not always understand the significance of the sales of package holidays.

One travel post by a seller we'll call 'X' on a social networking site ends: "Flights sold separately but showing from £37". The site was offering sales of hotel rooms and had added the detail of flight prices at the end of the site.

Was the offer for the seller to make the booking or for the traveller? It really isn't clear, and it must be clearer at the beginning that the flight is extra. If X makes the booking, was it at the same time as the hotel booking? If so, then an LTA (separate selection and payment) or package (if paid as a total fee) would be created.

The post could be misleading and an investigating Trading Standards service would have to consider whether the average consumer would be misled (thinking it an LTA or package), potentially leading to a DMCCA offence.

Another major issue is giving an approximate price of flights; they would be subject to change and this could be construed as misleading if the price increased. Travel agents should have a system to check that the information is as up to date as possible, which would be their due diligence defence.

Previously, brochure and website prices could be set where there were charter flights as flight prices rarely changed. Now, package holiday prices are based on scheduled flights and hotel rooms, and prices may well change right up to the point of departure.

Hotel and flight prices may also change, depending on the popularity of the hotel or flight. Where prices are described as a 'from' price, it is very difficult to gauge the actual cost until much closer to departure. For this reason, you should not quote a set price unless you are able to show you have a 'significant number' at this price.

Organisers and travel agents

The PTRs explicitly place liability for the performance of the travel services included in the package on the

organiser, irrespective of whether the travel services are performed by third parties.

In some cases, the person with whom the traveller immediately deals in purchasing a package will be the organiser. In other cases, the travellers will be dealing with a retailer (travel agent) selling on behalf of an organiser. When considering whether a trader is an organiser, it should make no difference whether that trader is acting on the supply side or presents themselves as a travel agent acting for the traveller. Any trader who ultimately combines a package will be the organiser for the purposes of the PTRs.

An organiser must always provide accurate information to travellers. Organisers could offer package holidays, LTAs, accommodation-only or flight-only facilities to the traveller. Travellers need accurate information to make an informed choice. It is important with package holidays and travel services to understand what the responsibilities of the organiser and agent are in any transaction with the traveller. In general terms, the organiser is the party that is contractually bound to the traveller to provide the travel services. A business will be the organiser if it places itself in contract with the traveller, either directly or through someone it has appointed or allowed to act as its agent.

Where an agent has been appointed, they can contract on behalf of that organiser and their acts are treated as those of the organiser. It is vitally important for businesses to understand that where monies are paid to an agent on behalf of the organiser, the monies are deemed to have been received by the organiser.

Case study: online holiday marketplace

The second case study concerns a well-known accommodation-only provider.

A Trading Standards service investigated the issue of a prominent accommodation marketplace that seemed to be selling package holidays and not providing the level of financial protection needed. Normally there is no problem with obtaining a holiday property, but there are links suggesting that they are growing into package territory.

Typically, although not definitively, an organiser will issue its own documentation to the traveller, have terms and conditions (which may include cancellation terms and provisions), set the price of the supply and be responsible for the actual supply of the services.

The PTRs include a definition for 'organiser' - for example where a traveller purchases a flight on the airline's website (from the airline (the organiser)) and a link on the flight website takes the traveller to an accommodation website where a booking is made within a 24-hour period. This 'linked website transaction' (not linked travel arrangement) occurs when the payment details, name and email address of the traveller are passed from the initial organiser to another trader in a targeted manner and would now be termed a package.

When considering whether a trader is an organiser, it should make no difference whether that trader is acting on the supply side or presents themselves as an agent acting for the traveller. Any trader that ultimately combines a package will be the organiser for the purposes of the PTRs.

Travellers need to inform the organiser without undue delay, considering the circumstances of the case, of any lack of conformity they perceive during the performance of a travel service included in the package travel contract. Failure to do so may be considered when determining the appropriate price reduction or compensation for damages where such notice would have avoided or reduced the damage.

Travellers will not be entitled to compensation for damages if the organiser can prove that lack of conformity is one of the following:

- attributable to the traveller
- attributable to unforeseeable or unavoidable actions of a third party not connected to any of the travel included in the package
- due to unavoidable and extraordinary circumstances

If a traveller is in difficulty during the package holiday, the organiser is obliged to give appropriate assistance without delay. Such assistance should consist mainly of providing, where appropriate, information on aspects such as health services, local authorities and consular assistance, as well as practical help - for example, about distance communications and finding alternative travel arrangements. They can charge a reasonable fee for such assistance if the difficulty is caused intentionally by the traveller or through the traveller's negligence. That fee must not in any event exceed the actual costs incurred by the organiser.

Case study: building works

The next case study concerns the issue of building works in a resort and when to notify the traveller.

CTSI contacted the Advertising Standards Authority (ASA) regarding its Code of Advertising Practice, which is based upon the DMCCA (which is enforced by Trading Standards services).

CTSI spoke to its executive about just what the ASA means when it states that: "When advertising hotels abroad the organiser should always put on the website (if this is how the package is sold) that there may be building works at the hotel". The Code of Advertising Practice is quoted. The three important points CTSI made were:

1. Information on building work, if relevant to the traveller, can be provided during the booking process. The ABTA Code states that this must be provided before the holiday is booked.

2. This view, that not everything has to be provided at the start of the booking process, is backed up by the case of *Purely Creative and Others vs The Office of Fair Trading* [2011]. The judge stated: "The question is not whether the omitted information would assist, or be relevant, but whether its provision is necessary to enable the average consumer to take an informed transactional decision".

Some information will be relevant, or helpful, but it isn't needed to make that initial decision to select the holiday. It will be much more important to the traveller whether the price is affordable, or the dates match with when they want to go.

3. We then said that the issue about building work is what you can say on the front page that will help the traveller. "There is building work at this hotel" would not be specific enough or of benefit to the traveller. They will need to know the impact of the work, which could range from visual untidiness through to noisy disruption of a holiday.

Also, building work changes all the time, so it would be impossible to accurately describe it. In addition, it affects travellers in different ways. They might be put in a room away from it. They might spend very little time at the hotel, and not be bothered at all. Also, they might book for a future date when the work will have stopped.

CTSI and ABTA consider it misleading to put a general statement on building work at the start. That is why it works so much better coming up later in the process through errata, if it affects the client's dates of travel.

Case study: injury sustained in hotel

Mrs D, a pensioner, booked a trip to London, travelled on a coach with 39 others, saw a show and stayed at a hotel overnight. The package cost £279. The following morning, she was having a shower when the glass shattered. The hotel called an ambulance, but she wasn't taken to hospital. The hotel did not contact the operator. She was very shaken but returned home on the coach. She was offered £250 by the hotel.

She could have a case for personal injury damages and may have had a case against the hotel for negligence as they owed Mrs D a duty of care; when a person is injured by the negligence of another, the injured party is legally entitled to damages. The types of damages recoverable in a personal injury case are intended to place the injured party in a position they would have been in had the injury never occurred. So, the 'injured' person can claim for their pain and suffering. If there is any suggestion of personal injury, the operator must refer the matter to their tour operator liability insurers. Under regulation 15(2) of the PTRs, the operator (as the organiser) has an obligation to provide assistance to deal with the claim.

It is not advisable for the operator to make any offer and the injured party should be referred to the operator's insurers.

The injured party has three years to make a claim and if the claim is not reported then the company's insurance premium would take a hit.

Who must provide the relevant information?

Information on package holidays must be provided to the traveller, and where the responsibility for this lies differs according to who sold the package.

When a package is sold through a travel agent / retailer, the organiser and the agent / retailer must ensure that the required information, both before and after a package is sold, is provided to the traveller.

To avoid duplication, they may decide between themselves who will provide this information, but must ensure that it is provided.

Where a package is not sold through a retailer, it is the organiser's responsibility to provide the information.

The Foreign, Commonwealth and Development Office (FCDO) provides travel advice for British nationals travelling abroad. The advice includes information on safety and security, local laws and customs, entry requirements, natural disasters, political situations, health alerts (including the latest information regarding COVID-19) and crime. You can find the latest foreign travel advice on the GOV.UK website.

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> Part 2. Linked travel arrangements

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