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trading standards law explained

Introduction

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In this guide, the words 'must' or 'must not' are used where there is a legal requirement to do (or not do) something. The word 'should' is used where there is established legal guidance or best practice that is likely to help you avoid breaking the law.

Travel law: what you need to know

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The purpose of this guidance is to provide practical guidance for travel agents on some of the major issues that will affect both themselves and their customers. The guidance will affect 'high street' travel agencies, as well as 'online' travel agents (OTAs).

The Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs) clearly state the difference between an 'organiser' of a package holiday and the 'retailer' of a package holiday. The PTRs need to highlight these definitions as organisers and retailers have different responsibilities. The definition of an organiser is a trader that combines and sells packages, either directly or through another trader. A retailer is a trader that sells (or offers for sale) packages combined by an organiser - for example, a 'high-street' travel agent, an OTA, or someone who arranges travel contracts over the telephone.

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, travel agents will be combining travel services and selling packages, and will therefore be responsible for the proper performance of the package.

All businesses selling packages and linked travel arrangements (LTAs) to travellers in the UK, even if they are established in an EU Member State, will have to comply with the UK insolvency protection schemes. This will mean that all organisers of flight-inclusive packages sold in the UK will need to hold an Air Travel Organiser's Licence (ATOL). Similarly, organisers of non-flight packages and facilitators of LTAs sold in the UK will need to arrange bonding, insurance or a trust account in accordance with UK rules.

There are a number of different ways in which travel agents can act. They may:

- be an **organiser** of package holidays if they are responsible for creating the consumer's package holiday
- assume the role of a **professional advisor**, not making a booking but taking instructions from the consumer as to their requirements and/or special needs, and then advising the consumer as to where to go, where to stay, and/or the best travel arrangements to make
- act as a **marketing agent** for the organiser. The travel agent may be appointed as a marketing agent for a package tour organiser, where the agent is appointed to promote the organiser's package holiday to the consumer
- act as the **sales agent** for an organiser. The travel agent may be appointed as a sales agent for an organiser, where the agent is appointed to conclude the holiday sale for the organiser and to arrange (by taking a deposit) for the consumer to enter into a contract with the organiser
- act as an **agent** for the consumer. The travel agent may be appointed as an agent for the consumer when concluding a booking with a principal for which the agent is not formally appointed (for example, when booking low-cost or budget flights)
- act as the **post-booking agent** for the organiser. A travel agent may be appointed as an agent for the organiser in dealing with post-booking matters. This might include collecting balances from the consumer, managing amendment and cancellation requests by the consumer and issuing travel documentation to the consumer

There are three main areas that a UK travel agency business will need to be aware of.

1. Travel agents will need to put in place processes and procedures when making sales in travel agencies, on the telephone or on their website, to ensure the relevant information provisions for pre- and post-contract information requirements are met. The PTRs include criminal offences if these information provisions are not followed prior to a sale / booking or confirmation of a sale / booking.

2. Travel agents that sell their own packages will need to provide insolvency protection for the money they take from travellers by holding an ATOL for flight-inclusive packages or non-flight packages, by providing a bond or insurance policy, or by holding the money in a trust account. The PTRs also require an organiser (a travel agent in this case) using a trust account to obtain insurance to ensure that if they collapse when the traveller is on holiday, repatriation will be covered. It is also an offence if the organiser informs their independent trustee that the travellers have returned from their holiday when they haven't, in order to release the money early into the organiser's trading account.

3. 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 organiser already complies with these parts of the PTRs.

A recent issue has been the sale by high street and online travel agents of a 'super package' (or 'package plus'). 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 cruise package. CTSI's view is that the travel agent will sell the package and the additional travel service as a retail agent. The responsibility for the package will be with the organiser and the responsibility of the additional travel service will rest with the airline or hotelier. CTSI does not consider that these transactions give rise to a new package, for which the retail agent is the organiser. Our advice is 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).

To help genuine businesses combat fraudulent behaviour, the Fraud Act 2006 is used by Trading Standards services to investigate false or misleading representations with the intention of making a gain

(the Fraud Act does not apply in Scotland; instead, it is the common law offence of fraud). The following is an example of a fake online air ticket scam by a travel agent who was jailed.

> An online travel agent fraudulently obtained more than £42,000 from a group of UK holidaymakers who paid for flights via the travel agent's website. However, the airline received no booking request. The agent admitted fraud and received a jail sentence. The travel agency fraudulently obtained more than £42,000 (47,308 Euros) from 30 holidaymakers. Holidaymakers provided evidence to Trading Standards that they paid for flights on the travel agency website. The website highlighted a number of flights, the Trading Standards service checked and the airline confirmed they were not booked by the travel agent. The director pleaded guilty to two counts of engaging in an unfair commercial practice and fraud at Crown Court. He admitted offences under the Fraud Act 2006 and was imprisoned by the court with an order to repay consumers.

In some cases, the trader with whom the traveller immediately deals in purchasing a package will be the organiser. In other cases, the traveller will be dealing with a 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 that ultimately combines a package will be the organiser for the purposes of the PTRs. 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 travel agent.

Where an agent has been appointed, it 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.

> Guidance for travel agents

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