businesscompanion
trading standards law explained

Guidance for travel agents

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Challenges presented by the 2018 PTRs

Package holidays and linked travel arrangements (LTAs) can be complex combinations of travel services that include transport and accommodation, but may also include other services such as car hire and significant 'other tourist services' such as excursions. Where travel agents contract for the traveller with different service providers (for example, airlines and hotels), a problem with the delivery of one service may affect the delivery of the others and under the new rules the travel agent has an important role to help resolve any issues that may arise.

The Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs) do not cover:

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

Travel agents will now be aware that separate selection and purchase of travel services is regulated under the PTRs and an agent could become a 'facilitator' of a linked travel arrangement. Where the agent is an 'online' travel agent (OTA), the same detail will apply; this is explained after the example below.

If you, as a travel agent, decide to sell a package, the details of the sale and responsibilities are clear. LTAs may also be sold by travel agents. You could also, as agent, 'facilitate' the sale of an LTA. For example, a traveller visits your branch, selects and then pays for a flight. They then, without leaving your agency, considers the purchase of a hotel at the destination. The agent offers the traveller a selection of hotels and the traveller decides to purchase a room in the hotel. He pays the agent separately for the hotel. As the agent has facilitated the sale of the LTA, they have to provide the traveller with insolvency protection. However, the insolvency protection only covers the agent and if the airline or hotel collapses prior to the start of the package, the traveller will not be protected and will not be refunded as the travel agent is still operating.

The Department for Business, Innovation and Skills (a predecessor of the Department for Business and Trade) said in its guidance that as soon as the traveller has purchased this style of arrangement they must be told whether they have bought a package or LTA, and if the agent fails to tell them, the arrangement will automatically become a package. However, an agent will mostly be selling packages, which are explained in the next section.

An OTA could also sell an LTA online. A traveller could visit your website and buy a flight. On the website there is a link to an accommodation website, and the traveller clicks through to the other website where they buy a room in the hotel. As long as the hotel room is purchased within 24 hours of purchasing the flight, it will become an LTA, and the OTA will have to provide insolvency protection for itself. However, the insolvency protection only covers the OTA; therefore, if the airline or hotel collapses prior to the start of the package, the OTA is still operating, the traveller will not be protected and will not be refunded.

Many of the requirements of the PTRs 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 agents will have to ensure that their business systems and practices take account of the PTRs.

Points for travel agents to note

When making sales in their travel agencies, on the telephone or on their website, the relevant information provisions for pre- and post-contract information requirements must be met. The PTRs include criminal offences if these information provisions are not followed (see later notes regarding what information needs to be provided at what stage).

In 2023, CTSI advised the organisers of Global Birdfair, a major UK exhibition, regarding sales made at the exhibition by tour operators based outside the UK. At the exhibition, the tour operators will be targeting UK travellers who visit and are required to comply with the UK insolvency protection rules. The organisers of the exhibition have been made aware and are taking legal advice. UK agents have stepped in to help these worldwide tour operators and they have been made aware of their liability.

Two important issues have arisen, which affect travel agent operations at Global Birdfair, but also any package sales made in the UK:

- we were asked whether verbal communication falls outside the PTRs. Verbal communication could be misleading and a breach of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) if the details would mislead an 'average consumer' (this legislation has now been replaced by the Digital Markets, Competition and Consumers Act 2024)

- we also explained that misleading descriptions made on social media could also breach the PTRs

As mentioned above, the PTRs also apply on social media. If an agent uses WhatsApp, Facebook, Google, X or Instagram to advertise and/or sell package holidays, they must comply with the PTRs. January is the most popular month of the year to book a holiday and for scam adverts. Holiday scams are big business, with data from Action Fraud showing more than £15m was lost by victims in the 2023-24 financial year.

Insolvency protection when selling package holidays and LTAs

When travel agents sell a combination of travel services, either as a package holiday or linked travel arrangement, the PTRs require the agent to provide insolvency protection. This is to ensure that the traveller will be refunded if the agent collapses before the traveller goes on their trip; or if they are already abroad, they will be repatriated at no extra cost to themselves.

It is now important to make the distinction very clear between the types of package and insolvency protection:

- agents must hold an Air Travel Organiser's Licence (ATOL) if they sell flight-inclusive package holidays. The ATOL licencing and investigation is carried out by the Civil Aviation Authority (CAA)
- agents selling non-flight package holidays (for example, cruises) or linked travel arrangements, must ensure they have a bond or insurance, or keep the traveller's money in a trust account, until they return from their package. Trading Standards services enforce these rules and provide help and guidance

Trust accounts

Trust account protection has changed since the UK's exit from the EU. The main points to be aware of are as follows:

- funds in trust accounts must be held in the UK and not in an EU Member State
- an agent, selling a package or facilitating an LTA using a trust account must obtain insurance to ensure that if they collapse when the traveller is on holiday, repatriation will be covered
- legally, it is an offence if the agent informs their independent trustee that the travellers have returned from their holiday when they have not yet done so, in an attempt to release the money early into the agent's trading account

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

Package holidays and travel agents

To help travel agents who may be concerned with the scope of the PTRs, we will revisit what constitutes a package holiday:

- traditional package holidays sold by tour operators, travel agents or online traders combined by one trader and sold under a single contract
- travel services sold in a single booking process (a shopping-basket style of selection) where the traveller can select a range of travel services, offered by the agent, related to a single trip to create a package. The point of sale could be at the travel agent, their website or over the telephone
- travel services sold at an inclusive or total price. So, for example, an agent puts together a selection of travel services for the same trip and sells it to the traveller for a total price
- a combination sold as a package (or under a similar term) - for example, 'combined-deal', 'all

inclusive' or 'all-in arrangement'

- gift-box style packages where an agent sells a package that allows a traveller choice in selecting one of the varieties of travel services in the package. For example, a 'Tastes of the Region' package that allows the recipient to choose from a selection of accommodation and meals in the particular region, to be selected from options, after the package has been purchased
- package sold through a linked online booking process. For example, a traveller visits an online travel agent and selects and purchases a flight. The travel agent's website provides a link to an accommodation website. If the traveller clicks on this link and finds that their name, payment details and email address appear on this second, 'targeted' website and they continue, purchasing a hotel to go with the flight, all within 24 hours, it becomes a package and the travel agent must provide insolvency protection

Case study: the Facebook picture of a 'four-star' hotel room

This case study concerns a misleading description of a four-star hotel room posted on Facebook by an online travel agent. Visitors to this hotel complained on Facebook that the rooms were nothing like the advertising picture. The advert stated that "the rooms are very large with your very own lounge."

This Facebook complaint prompted a large number of similar complaints. Trading Standards were contacted around the UK and they discovered that the hotel wasn't four-star and the picture was a 'misleading description' under the Consumer Protection from Unfair Trading Regulations 2008 (this legislation has now been replaced by the Digital Markets, Competition and Consumers Act 2024 (DMCCA); see below for more information on the DMCCA). The travel agent was quick to pay compensation and accepted an undertaking as to future operations. The pictures show the advertised room and then the 'actual' room with a similar eiderdown.





Case study: 'meet and greet' services

In August 2023, the boss of a major airport 'meet and greet' parking firm was jailed following a lengthy investigation by Trading Standards officers.

Customers were told that their cars would be kept in a secure car park, covered by security and CCTV cameras, floodlighting and 24-hour staffing. However, the reality was that cars were parked in a muddy field, or on residential streets, and there was no CCTV or security cameras, no floodlighting and no 24-hour staff coverage. Car keys and the cars themselves were kept insecure, resulting in thefts of keys and cars. Other cars suffered significant damage, or were used by employees of the company for their own or the company's purposes without the permission of the owners.

A major incident concerned the theft of 130 keys and a number of vehicles from the site following a break-in. Holidaymakers returning from trips abroad were expecting to be met by drivers at the terminal with their cars, but instead learned that a large number of cars had been stolen.

Should agents be concerned about LTAs?

It is relatively straightforward to work out whether a transaction constitutes an LTA. In particular, there are two scenarios for agents to consider.

1. The separate selection and separate payment of travel services made during a single visit to a travel agent or the travel agent's website. For example, the traveller selects and pays for a hotel in a travel agent and then, without leaving the agent's premises, the traveller selects and pays separately for a flight. This is an LTA. If the traveller visited the travel agent's website and selected and paid for a hotel, and then, without leaving the website, selected and paid for a flight, this would also create an LTA.

2. Visiting an online travel agent's website and, after the traveller has purchased one travel service, they are 'targeted' with a cross-sell to another trader's website, where they buy another travel service from this other website within 24 hours. This is an LTA. This may seem a very similar scenario to the 'package' definition above; however, in an LTA situation, the traveller's name, payment details and email address do not automatically appear on the second website.

It is important for agents to understand whether the combination of travel services they arrange for travellers are packages or LTAs. The legal obligations will differ, including the requirement for insolvency protection. There is statutory information that must be provided in a clear, comprehensible, and prominent manner in any materials presented to, or discussions carried out with travellers prior to them purchasing a package holiday or LTA.

Case study: an LTA online investigation

A traveller visited a travel agent and asked to book a room in this iconic hotel in Dubai.



The traveller was keen to propose to his girlfriend and paid for a room. Without leaving the agency, he phoned his girlfriend who asked about the flight. The agent showed the traveller a selection of flights, one of which he purchased separately. Prior to departure, the airline collapsed going into administration. As it was an LTA and the agent was still operating, the traveller had to pay for another flight.

Three practical examples can be seen below of the sale of, respectively, a package, an LTA and a package bought online.

A package. 'I visited a travel agent with my wife to book a hotel as we wanted to travel to Paris. The agent offered several different hotels and we selected one. My wife then suggested we could also book a flight and to ensure we could get around we added car hire. The agent sold us the choices we had made at a total price.'

An LTA. 'I visited a travel agent and paid for a flight to Barcelona. Before leaving the agent, I decided to phone my wife to give her the good news. She asked me to book a hotel in Barcelona as well. I paid separately for the hotel room and then left the agent's.'

A package bought online. 'I visited an airline website and bought a flight. On the website there was a link to an accommodation provider. I clicked on the link and my name, payment details and email address appeared on the accommodation website. I purchased the accommodation within 24 hours.'

Information requirements under the PTRs

This element of best practice for travel agents concerns the statutory information that must be provided in a clear, comprehensible and prominent manner to travellers before making a package holiday booking. The relevant Schedules to the PTRs are listed below with a brief overview of their meaning.

Schedule 1 information must be provided to the traveller by the travel agent, prior to a package holiday booking being made.

Schedule 2. The provision of information will not be a problem as it relates to online travel agents' website sales, where links can be used to provide travellers with their 'key rights' (this is contained in Part

1 of Schedule 2).

Schedule 3, Part 2, again talks about key rights information. This is where the problems occur as they relate to travel agents (shop sales) and telephone sales, where the consumer's 'key rights' must be explained **before** the booking is made. Part 1 relates to the insolvency protection and Part 3 to the copy of the actual Regulations.

Schedule 4 lists the traveller's key rights prior to concluding a contract with one online travel service provider, no later than 24 hours after receiving confirmation of a booking with another 'linked' online travel service provider. The first online travel service provider will be fully responsible for providing insolvency protection and the proper performance of the package.

Schedule 5 highlights the information to be provided in the package travel contract after the booking has been made (the 'confirmation invoice').

Schedules 6 to 10 deal with the information provisions for LTAs.

Agent sales through social media sites

Regardless of the sales channel (in person, online or any other method), any sale of a package holiday is covered by the PTRs, even holiday sales through social networking sites.

This also includes booking via an app on a phone, such as Instagram and X. There are also businesses that use Facebook, which means they are acting as OTAs when they advertise and sell packages. If a business uses an app or a website to advertise and sell package holidays, or even simply to promote itself, it must comply with the PTRs. It is best practice for travel agents using social media to sell holidays to have a system for checking that the information is as up to date as possible. This would be a 'due diligence' defence for the trader.

Regarding what due diligence would mean for travel agents, in relation to the offences under the legislation, agents should have a checking system, which will show:

- suppliers providing up-to-date facilities and pictures that you are using in advertising and selling
- clear terms and conditions for holiday sales and special offers

Digital Markets, Competition and Consumers Act 2024

Trading Standards services enforce the PTRs and travel agents should be aware of the specific legislation that leads to investigations for inaccurate or misleading information to consumers.

The practice often referred to as 'drip pricing' is covered by Part 4, Chapter 1 of the Digital Markets, Competition and Consumers Act 2024 (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

The DMCCA is used extensively by regulators to pursue investigations where there have been misleading or deliberately false holiday and travel descriptions in brochures, online, in travel agencies or where sales are made over the telephone.

Here are two examples:

- bait advertising. This is where an agent misleads a consumer into believing they can buy a package holiday or travel service at a low price when the agent is aware that they do not have reasonable stock available or are not able to supply at that price ('bait and switch' is where the agent attempts to 'up-sell' to a higher-priced product)
- falsely stating that a product is only available for a very limited time, to encourage the consumer to 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

The DMCCA prohibits misleading descriptions that are likely to cause the average consumer to take a 'transactional decision' that they would not have taken otherwise. This does not only relate to pre-shopping but also includes after-sales. For more information on the meaning of 'transactional decision', and on the DMCCA generally, see 'Protection from unfair trading (criminal law)'.

'Misleading actions' happen when an agent 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 about 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 an agent gives insufficient information about a holiday or travel service. It is a breach of the DMCCA 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 be likely to cause the average consumer to take a transactional decision that they would not have taken otherwise.

Some other banned practices are listed below:

- claiming to be a signatory to a code of conduct when the trader is not - for example, claiming compliance with the ABTA Code of Conduct without being a member
- displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation - for example, using an ATOL (Air Travel Organiser's Licence) logo
- claiming a code of conduct as an endorsement from a public or other body which it does not have

It is important for agents to understand whether the combination of travel services they arrange for consumers are packages or LTAs. The legal obligations will differ - for example, there are different

requirements regarding insolvency protection. There is statutory information that must be provided in a clear, comprehensible and prominent manner in any materials presented to, or discussions carried out with, travellers prior to their purchase.

For the time being, consumers' rights of redress are still covered by the Consumer Protection from Unfair Trading Regulations 2008 (CPRs); information on these rights can be found in 'Protection from unfair trading (consumers' rights of redress)'.

Card surcharges

Holiday and travel businesses (including travel agents) are not permitted to impose surcharges for taking payment by a consumer debit or credit card, or an electronic payment service that is backed by a bank or an intermediary.

For more information on these requirements, please see 'Payment surcharges'.

Businesses can make a charge for:

- delivery fees
- booking fees
- administration charges

Frustrated contracts

There are some circumstances where it is impossible for a contract to go ahead as agreed - for example, terrorist activity at the holiday resort or when a situation like the COVID-19 pandemic prevents travel. The contract is therefore frustrated. As a result, the contract comes to an end and where consumers have paid money in advance for services or goods that they have yet to receive, they will be entitled to obtain a refund. As agents will be aware, the Competition and Markets Authority are investigating a number of examples where this has not been the case.

Depending on the circumstances of each case, the following are likely to apply.

A contract will be 'frustrated' as a matter of law if, due to no fault of the parties, something happens after the contract was entered into that means it can no longer be performed at all or performance would be radically different to what was agreed. As a result, the contract comes to an end.

Other consequences of frustration, in particular, what happens to money already paid under the contract, will depend on which of the laws apply to the contract.

Under the law of England and Wales, certain consequences of frustration are set out in the Law Reform (Frustrated Contracts) Act 1943. Under this legislation, parties to the contract are no longer liable to make any outstanding payments and they are entitled to get back anything they have already paid.

Under Scots law, if a contract proves to be frustrated then it completely ceases to exist from the moment it becomes frustrated. The result of this is similar to England and Wales, where outstanding payments do not need to be made and anything already paid must be refunded.

Cancellation relating to Government guidance

Where a service can legally be provided as agreed, but a business or consumer does not want to go ahead with the arrangement (for example, because of Government advice), the position is more legally complex. The circumstances of each case will have to be carefully considered.

The Foreign, Commonwealth and Development Office (FCDO) provide advice for travellers going to destinations all over the world. If a package holiday could be cancelled, considering FCDO advice against travel to the relevant country (due to unavoidable and extraordinary circumstances, as set out in the PTRs), travellers should be entitled to a full refund. If a package holiday has been frustrated, then any applicable pre-existing terms and conditions on cancellation and refunds will not apply.

The current situation

Many travellers will have booked packages through a travel agent. The agent may have 'dynamically packaged' the booking with different travel service suppliers. If, because of the pandemic or FCDO advice, the package had to be cancelled, the agent would be responsible to refund, even if they could get no refund from the third party (for example, the airline), because the flight was still operating, despite FCDO advice.

We are aware that until the late 1990s most packages were based on charter-flights. The airlines were owned or linked to tour operators, so when operators cancelled flights (due to the FCDO advice), a refund could be made with nobody losing out. Now lots of packages are based upon scheduled, low-cost carrier flights that must be paid for and tickets issued on the day of the booking. Every low-cost carrier operates on the basis that if a flight is operating (despite FCDO advice) and customers refuse to travel, the fare is not refunded.

There is help for travel agents (called 'retailers' in the Regulations) with a 'right of redress'. Regulation 29 states that travel agents can bring claims against third parties who have done something that triggers a liability for the travel agent, organising a package, to a traveller.

For example, a travel agent sells a flight-inclusive package to a traveller. The airline cancels the flight. The flight cancellation means the travel agent has to cancel the package and refund the traveller. This situation happened regularly during the pandemic and the Regulations give the agent the right to sue the airline in these circumstances if they refuse a refund.

The airlines have recognised that they cannot sell many tickets at full fares and, therefore, appoint a small number of 'authorised agents', to sell lower fares on their behalf. These are what are called the airlines' 'net fares'; they allow agents to sell the flights at a price that would be popular for customers. However, where a customer wants a full refund (for example, during a global pandemic), where their flight is cancelled, the agent is required to refund the full cost, which will include the agent's profit margin as well. This is why agents will be looking at a cancellation charge or fee, in order to recoup their commission. The cancellation charge or fee must be made clear to the traveller at the time of purchase, otherwise the full cost the customer paid must be refunded.

A positive final court case for agents

Southall Travel Agency struck a blow for all travel agents facing dishonest chargebacks from customers, after challenging the automatic refund of a card payment in court in August 2024.

The chargeback arose after a customer bought a long-haul return flight with Turkish Airlines for £752 from

Southall Travel, which acted as agent on behalf of the airline (Turkish Airlines); the outbound flight from the UK operated, but the return flight was cancelled.

The customer paid for a replacement flight and accommodation following the cancellation. Then, when they got home, raised a chargeback with their bank against Southall Travel to recover the total cost of the original flights and accommodation.

The customer received a refund for both the outgoing and return flights. The chargeback was upheld even though Southall had acted as agent, had never even received the sum of £752.64 (paid direct to the airline), and the customer flew on the outgoing flight from the UK.

Southhall Travel Agency made a legal claim to recover the money and succeeded at a Court hearing in August 2024. The court also rejected a counter claim from the customer for almost £3,000 in expenses to cover the replacement flight and accommodation.

The Judge found "no basis in law" for the customer's counterclaim, which was dismissed in its entirety, and they were instead ordered to reimburse Southall Travel for the cost of the flights that had been previously awarded under the chargeback process.

Useful links

Advertising Standards Authority
ABTA
Civil Aviation Authority
ATOL Protection
Travel or do business in Europe: Brexit guidance, GOV.UK

< Introduction

> Legislation etc

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