

CTSI GUIDANCE FOR UK Travel Agents

Helping UK Travel Agents with their responsibilities with The Package Travel and Linked Travel Arrangements Regulations 2018, after Covid-19 and following the UK's exit from the EU.





Climate change, flights and their carbon footprint

Trading Standards are concerned about the effect of flights and associated legislation in the holiday sector adding to the amount of greenhouse gas emissions released into the atmosphere by a given activity.

In August 2021 there were only seven flights with airlines having an 189 seat capacity, but only flying 38 passengers. The flights went ahead because otherwise the airline would have had to pay compensation under EU261 (European legislation transposed into UK law following the EU-Exit) This law requires the airline to pay compensation for all their delayed, cancelled or overbooked flights.

There was also the problem with aircraft “slot” allocations at airports. A slot gives the airline ability to fly at all times during this period. The pressure to use these slots, specifically between May and October is enormous, especially the financial penalty of almost £500,000 per slot.

There is a concern that EU261 and the slot allocation at airports affect climate change and the Government may well act to improve the situation.

Travel Law: What you need to know

Bruce Treloar, CTSI Lead Officer for Holiday and Travel Law

The Chartered Trading Standards Institute is aware that a high proportion of travel agents have been closed or working from home during Covid. The Government has now relaxed a number of the rules preventing travel abroad and we have been told there is a much better outlook for bookings for the remainder of the year.

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.

The Government is discussing the urgent need for amendments to the Package Travel and Linked Travel Arrangements Regulations 2018, but they have said that the results will not be published till the end of this year or in early 2023. So the details in this guidance are current and will start with the relevance of cancelled package holidays due to Covid and the issue of refunds for holidays, as highlighted in Regulation 12 (7). A draft proposal in the consultation is the possible use of Refund Credit Notes (as explained below), as long as the traveller is given the option of a cash refund.

Case Study:

Trading Standards have recently investigated a number of online travel agency frauds, one of which ended with the Travel Agent being imprisoned.

Holidaymakers went onto the website and booked flights, totalling £42,000, but when they arrived at the airport no bookings had been made with the airline. Complaints were made to Trading Standards who obtained evidence to show the payments were made to the online travel agency, but no bookings were made with the airline.

The details of the Global Travel Taskforce report, published by the Government in April 2021, had a number of recommendations to help with the steps back to holiday and travel normality, which included the “traffic light system” of identifying high risk destinations.

During the Covid pandemic, the issuing of Refund Credit Notes (RCN’s) were approved by the Government as an alternative method of a cash refund for cancelled package holidays during Covid, as long as agreed by the traveller. The Government also helped fund the issuing of ATOL, RCN’s, for flight inclusive packages.

The expiry date for these ATOL, RCN’s is September 30th 2022 and up to November 2021 there were still £132 million’s worth of RCN’s still awaiting encashment. It has been illegal to issue any more ATOL, RCN’s since 19th December 2021.

REFUND CREDIT NOTES EXPLAINED

A refund credit note for a package holiday:

- » Lets you **REBOOK** your holiday for a later date
- » **IS** financially protected
- » Gives you the right to a cash **REFUND** up to the date it expires
- » **IS NOT** a holiday voucher –holiday vouchers do not have financial protection



The introduction of the Package Travel and Linked Travel Arrangements Regulations 2018 (2018 PTRs) presented major challenges for Travel Agents.

Package holidays and Linked Travel Arrangements (LTAs) can be 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. Where travel agents contract for the consumer 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 2018 PTRs **do not cover**;

- » day trips (under 24 hours and not including overnight accommodation);
- » packages and LTAs which are organised occasionally and on a 'not for profit basis' for a limited group of travellers,
- » are situations in which businesses make bookings through contracts with business travel agencies (a business-to-business contract).

Travel agents will now be aware that separate selection and purchase of travel services will come under the new rules. An agent could become a "facilitator", of a linked travel arrangement.

Linked Travel Arrangements (LTA's) are new to the Regulations. If you, as a travel agent, decide to sell a package, then the details of the sale and responsibilities are clear.

You could also, as agent, "facilitate" the sale of a Linked Travel Arrangement. For example, a traveller visits your branch or website, selects and then pays for a flight. He then, without leaving your agency or website, 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 he has 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. BEIS have said that as soon as the traveller has purchased this style of arrangement they should 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 on the following page.

Many of the requirements of the 2018 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 2018 PTRs.

Travel agents will need to be aware of the following points:

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 are met. The 2018 PTRs provide criminal offences if these information provisions are not followed (see later notes regarding what information needs to be provided at what stage).

We have recently advised Organisers of a major Global Birdfair Exhibition in the UK, regarding sales made at the exhibition by Tour Operators based outside the UK. At the exhibition, the Tour Operators will be targetting 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 the Birdfair Exhibition but also any package sales made in the UK.

1. We were asked whether verbal communication falls outside the Regulations. Verbal communication could be misleading and a breach of the Consumer Protection from Unfair Trading Regulations 2008 if the details would mislead an "average consumer".
2. We also explained that misleading descriptions made on social media could also breach the Regulations



Insolvency protection when selling Package Holidays and LTA's

When Travel Agents sell a combination of travel services, either as a package holiday or linked travel arrangement, the Regulations require the Agent to provide insolvency protection to ensure the traveller will be refunded if the Agent collapses before the package or when the traveller is on the package holiday, to ensure 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 shall hold an Air Travel Organisers 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 (e.g. cruises) or linked travel arrangements, shall ensure they have a bond, or insurance or keep the travellers money in a Trust Account, until they return from their package. Trading Standards 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;

1. funds in trust accounts must be held in the UK and not in another Member State.
2. an agent, selling a package or facilitating an LTA using a trust account must obtain insurance to ensure that if they collapse when the consumer is on holiday, repatriation will be covered.
3. 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 returned in an attempt to release the money early into the agents trading account.

Package holidays and travel agents

To help travel agents who may be concerned with the scope of the Regulations, 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 consumer 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 are 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 consumer for a total price.
- » combination is sold as a package (or under a similar term). For instance, '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 consumer visits an online travel agent selects and purchases a flight. The travel agents website provides a link to an accommodation website. If the consumer clicks on this link and finds 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:

CPR's Misleading Description and the 4* Hotel Room, "Facebook" picture

Visitors to this hotel complained on Facebook that the rooms were nothing like the advertising picture. The advert stated, "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 Trading Standards discovered it wasn't 4 star and the picture was misleading. The hotel were 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!



Should agents be concerned about Linked Travel Arrangements (LTAs)?

The LTA, has only two scenarios to consider. Its either;

- » the separate selection and separate payment of travel services made during a single visit to a travel agent or the travel agents website. e.g. the traveller selects and pays for a hotel in a travel agents and then, without leaving the agents, he selects and pays separately for a flight. If the traveller visited the travel agents website and selected and paid for a hotel and, without leaving the website, selected and paid for a flight, this would also create an LTA.
- » visiting an online travel agent's website and after the consumer has purchased one travel service, they are 'targeted' with a cross-sell to another trader's

website, where the traveller buys another travel service from this other website within 24 hours. This may seem a very similar scenario to the "package" definition above BUT, in an LTA situation, the consumer'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 consumers 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 consumers prior to them purchasing a package holiday or LTA.

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 OF THE SALE OF A PACKAGE, LTA AND AN ONLINE TRANSACTION ARE BELOW.

1 "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".

The first example is a package.

2 "I visited a travel agent on 5th February and booked a flight to Barcelona. I paid for the flights just as the shop was closing. I then returned to the Agent first thing the following morning (6th Feb) and bought a room in a lovely hotel in Amsterdam. Obviously, my booking was within 24 hours, so I am sure it's an LTA as I paid separately, is that right?"

The second shows the purchase of two separate travel services where the traveller left the Agent, revisiting the following day (so no package or LTA).

3 "A traveller visits an airline's website and buys a flight. On this website is a link to an accommodation provider. The traveller clicks on the link, and his name, payment details and email address appear on the accommodation website. The traveller purchases a hotel within 24 hours".

The last example is a package bought online.

Information requirements under the Package Travel and Linked Travel Arrangements Regulations 2018

This element of ‘best practice’ concerns the statutory information that must be provided in a clear, comprehensible, and prominent manner to consumers before making a package holiday booking. The relevant Schedules in the 2018 PTRs are listed below with a brief overview of their meaning:

Schedule 1 states information requirements in the Regulations should be covered in any brochure description and ideally the information should be discussed during the sales process, complementing the brochure description.

Schedule 2 information will not be a problem as it relates to website sales where links can be used to provide consumers 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, the copy of the actual regulations.

Schedule 4 lists the consumer’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.

What about agent sales through social media sites?

Regardless of the sales channel, any sale of a holiday, be it in person or online is covered by the regulations, even holiday sales through social networking sites.

For example - a trader selling a holiday through a social media post is offering some “lovely hotels in different parts of the world”. The post then states that “flights are available from £37 from Doncaster airport”.

The potential problem with this type of advertising is that the booking details may not be made clear to the traveller at the point of sale. Will this trader be in a position to book flights as well as accommodation or is this just an indication of the prices available?

If the trader was to make the booking for both elements for any potential traveller, then this would be a Linked Travel Arrangement. If the trader is suggesting relevant flights in the post and what websites to purchase these from at the advertised prices, then

this could also be considered a Linked Travel Arrangement.

The sales post could be misleading, and consideration would need to be given whether the average consumer would be misled (thinking it’s an LTA or package), potentially leading to a CPR offence.

It is best practice for travel agents using social media to sell holidays to have a system to check that the information is as up to date as possible. This would be a “due diligence” defence for the trader.

What due diligence would mean for the travel agent.

- » In relation to the offences under the Regulations, the Courts will still require evidence of a checking system which can be regularly updated, to include;
- » Evidence of Contracts signed-off with suppliers...e.g. facilities and pictures, before offering for sale
- » Clear Terms and Conditions for holiday sales and Special Offers
- » Instructions to Resort staff to inform of changes before and during the holiday season (errata)

Case Study:

This checking system would avoid the problems in this complaint. It involved the advertising of an apartment for families and when the family arrives, there was a lovely infinity pool, but the edge of the infinity pool, if you should accidentally go over the edge, meant you would fall 12ft below to a concrete car park. The agent moved the family and paid compensation.

The Consumer Protection from Unfair Trading Regulations (CPRs)

Trading Standards enforce the 2018 PTRs and travel agents should be aware of the specific legislation that leads to investigations for inaccurate or misleading information to consumers.

The CPRs are legislation 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 (or 'bait and switch'). This is where an agent misleads a consumer into believing they can buy a package holiday or travel service at a low price when they are aware that they do not have reasonable stock available or are not able to supply at that price; this is also 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 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.

The CPRs prohibit misleading descriptions 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 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 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 an agent 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.

Some other banned practices are listed below:

- » 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.
- » displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation, e.g. using an ATOL (Air Travel Organisers 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, 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 their purchase.

Card surcharges?

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

Frustrated contracts

The pandemic has highlighted some circumstances where it is impossible for a contract to go ahead as agreed. This 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 and their investigations are highlighted in the article below.

<https://www.gov.uk/government/publications/cma-to-investigate-concerns-about-cancellation-policies-during-the-coronavirus-covid-19-pandemic>



The Trading Standards view, depending on the circumstances of each case investigated, is as follows:

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 which 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 English law, 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.

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, e.g. because of Government advice, then 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 Package Travel and Linked Travel Arrangements Regulations 2018) then consumers 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.

Current situation advice

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 e.g. the airline, because the flight was still operating, despite FCDO advice.

We are aware that until the late 1990’s 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 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 which 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. There is also a proposal in the

“It is a breach of the CPRs to fail to give consumers the information they need to make an informed choice”

2018 PTR’s consultation, to make it obligatory for travel service suppliers to refund an agent if they have to cancel the travel service, which was part of the package.

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 is called, the airlines, “net fares”, allowing agents to sell the flights at a price which would be popular for customers. However, where a customer wants a full refund (e.g., during a global pandemic), where their flight is cancelled, the agent is required to refund the full cost which will include the agents profit margin as well. This is why agents will be looking at a cancellation charge or fee, to recoup their commission. The cancellation charge or fee should be made clear to the consumer at the time of purchase otherwise, the full cost the customer paid should be refunded.

Useful Links

General information

BUSINESS COMPANION

Main Site: www.businesscompanion.info
Monies in Trust: www.businesscompanion.info/en/quick-guides/services/package-travel-and-holidays#Moniesintrust

CIVIL AVIATION AUTHORITY

Main Site: www.caa.co.uk
ATOL Protection: www.caa.co.uk/atol-protection

ABTA

www.abta.com

ADVERTISING STANDARDS AUTHORITY

www.asa.org.uk

Legislation

THE PACKAGE TRAVEL AND LINKED TRAVEL ARRANGEMENTS REGULATIONS 2018

www.legislation.gov.uk/ukdsi/2018/9780111168479/contents

CONSUMER PROTECTION FROM UNFAIR TRADING REGULATIONS 2008

<https://www.legislation.gov.uk/ukdsi/2008/9780110811574/contents>

EU Exit

GOV.UK

www.gov.uk/visit-europe-1-january-2021



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