



Holiday law for travel agents

Guidance to help UK travel agents with their responsibilities

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INTRODUCTION

The background to travel law as it applies to agents

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 (2018 PTRs) clearly state the difference between an ‘organiser’ of a package holiday and the ‘retailer’ of a package holiday. The 2018 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 2018 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 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 2018 PTRs include criminal offences if these information provisions are not followed.
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 2018 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 2018 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 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 2018 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

How the law on package holidays and linked travel arrangements applies to agents

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 (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 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 2018 PTRs and an agent could become a ‘facilitator’ of a linked travel arrangement.

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 or website, selects and then pays for a flight. They then, without leaving your agency or website, consider 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.

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.

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 2018 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 2022, 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 would 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 2018 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’
- we also explained that misleading descriptions made on social media could also breach the 2018 PTRs

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 2018 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 2018 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 CPRs (see below for more information on these Regulations). 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.

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 on 5 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 (6 February) 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?’

A package bought online: 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.

Information requirements under the 2018 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 2018 PTRs are listed below with a brief overview of their meaning.

Schedule 1 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 holiday covered by the 2018 PTRs, 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, 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, this could also be considered a linked travel arrangement.

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

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, the courts will still require evidence of a checking system that can be regularly updated, which must include:

- evidence of contracts signed-off with suppliers (for example, facilities and pictures) before offering for sale
- clear terms and conditions for holiday sales and special offers
- instructions for resort staff to inform of changes before and during the holiday season (errata)

Consumer Protection from Unfair Trading Regulations 2008 (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 the agent is 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 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 CPRs prohibit misleading descriptions that cause, or are likely to cause, the average consumer to take a ‘transactional decision’ they would not have taken otherwise. 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 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 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 transactional decision 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.

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’.

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. 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.

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 2018 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.

LEGISLATION

The laws featured in this guide

Trading Standards

For more information on the work of Trading Standards services - and the possible consequences of not abiding by the law - please see ‘Trading Standards: powers, enforcement and penalties’.

Key legislation

Law Reform (Frustrated Contracts) Act 1943

Fraud Act 2006

Consumer Protection from Unfair Trading Regulations 2008

Package Travel and Linked Travel Arrangements Regulations 2018

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Please note

This information is intended for guidance; only the courts can give an authoritative interpretation of the law.

The guide’s ‘Key legislation’ links may only show the original version of the legislation, although some amending legislation is linked to separately where it is directly related to the content of a guide. Information on changes to legislation can be found by following the above links and clicking on the ‘More Resources’ tab.