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trading standards law explained

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Foreword

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The introduction of the Package Travel and Linked Travel Arrangements Regulations 2018 (2018 PTRs) presents major changes for businesses. Package holidays and linked travel arrangements (LTAs) are often 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. Different service providers (for example, airlines and hotels) are often involved and a problem with the delivery of one service may affect the delivery of the others.

The 2018 PTRs do not cover the following:

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

Businesses will have to accept that separate selection and purchase of travel services will come under the new rules (for example, in the case of a traveller visiting a high street travel agent or online travel agent, paying for a flight and, without leaving the travel agent or moving to another website, deciding to book a hotel to 'link' with the flight).

Businesses that sell online packages and LTAs will also be affected by the 2018 PTRs. These businesses may particularly be affected by what is known as a linked online booking process. A linked online booking process is where the traveller's name, payment details and email address are sent from the first trader they purchase from to a 'targeted' second trader, where a purchase is made no longer than 24 hours after

the first service was purchased. For example, a traveller visits an airline website and buys a flight. As the website reaches the payment page, there is a link to a hotel site. The traveller purchases the flight, then clicks on the link and their name, payment details and email address appear on the second site. If they make a hotel booking within the 24-hour period it becomes a package and the airline is the 'organiser' of the package. If the traveller's name, payment details and email address do not appear on the second website and a sale goes ahead within 24 hours, this will make it an LTA (as opposed to a package).

The 2018 PTRs consider alternative sales of holidays; despite the enduring popularity of the package holiday, tastes in holidays continue to evolve. Mix-and-match options have been facilitated by technological changes and the 2018 PTRs attempted to regulate the new trends.

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

Introduction

The UK's exit from the European Union (EU) was a constant problem for businesses during 2020. It was not enough to comply just with insolvency protection in the UK and there was really not enough guidance as to how organisers in the UK needed to amend their modus operandi when targeting citizens in EU Member States.

Businesses need to be aware that investigations could involve other laws in addition to the 2018 PTRs.

Action could be taken under the Consumer Protection from Unfair Trading Regulations 2008 if misleading or inaccurate statements are given about package holidays. Unfair terms and conditions could be investigated under the Consumer Rights Act 2015.

To help genuine businesses combat fraudulent behaviour, we use the Fraud Act 2006 to investigate false or misleading representations with the intention of making a gain. Details will be given later in this section of a fake online air ticket scam by a travel agent who the courts jailed. "Cease and desist" letters are also explained to help businesses prevent scammers infringing intellectual property rights.

Without any doubt the outbreak of COVID-19 affected all package holiday sales and caused considerable problems for businesses required to offer refunds when packages had to be cancelled.

Many businesses suffered as they were unable to obtain refunds from suppliers of the travel services constituting the package. The emergence of refund credit notes were accepted by some travellers, including ATOL refund credit notes, underwritten by the Treasury. There was little money in the Air Traffic Trust Fund owing to the collapse of Thomas Cook just before the pandemic.

Climate change and the carbon footprint of some transport providers are also of concern. A carbon footprint is a simple way to express the problems for airlines. The 'size' of their carbon footprint depends on multiple factors, the primary one being the amount of greenhouse gas emissions released into the atmosphere. The European Commission has stated that it may be discussing this problem in the European Directive consultation later in 2022.

The purpose of this report is to provide key points and guidance for business in understanding the requirements of the 2018 PTRs, including case studies of actual situations showing how the rules are applicable.

The report will also highlight the help and assistance for business in the 2018 PTRs and cover the issue of the Foreign, Commonwealth and Development Office advice and whether it is mandatory.

All businesses selling packages and LTAs to consumers 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.

Where UK-established businesses target citizens in EU Member States to sell package holidays or facilitate LTAs, the rules have changed since the UK's exit from the EU. There will be a requirement for UK businesses to take out insolvency protection in accordance with the rules of each member state into which they sell package holidays or facilitate LTAs.

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 it is likely that many more travel companies will have to ensure that their business systems and practices take account of the new rules. There are three main areas of which businesses will need to be aware:

- 1.** Businesses 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.** Businesses 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 using a trust account to obtain insurance to ensure that if they collapse when the consumer is on holiday, repatriation will be covered. It is also an offence if the organiser informs their independent trustee that the consumers have returned from their holiday, when they haven't, to release the money early into the organiser's trading account.
- 3.** UK-based travel agents which deal with non-UK organisers will be liable for the proper performance of the package and for insolvency protection, or must provide evidence that the non-UK organiser complies with these requirements.

Key points and guidance to help businesses understand the requirements of all holiday laws applicable to holiday and travel arrangements sold after 1 July 2018, and how Brexit may have affected some of the law:

- businesses 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 traveller is given specific information before booking the package and also specific information when the confirmation invoice is presented
- businesses will need to provide security for the money they take from travellers by holding an Air Travel Organiser's Licence (ATOL) for flight-inclusive packages or, for non-flight packages or LTAs, by providing a bond or insurance policy, or by holding the money in a trust account
- trust accounts are becoming more popular for businesses to provide insolvency protection. With all trust accounts there should be an independent trustee who oversees it. The money taken from a customer should be kept in the trust account until their return. It is an offence if the business requests the release of money into their trading account if the customer has not returned from their holiday

Definitions

The 2018 PTRs include new package holiday definitions, LTAs and considerable changes and requirements to provide travellers with information before and after a booking. Comment will also be made on the way the law relates to telephone bookings.

It is important to establish whether you are acting as an 'organiser' or 'retailer' of package holidays. The Regulations define an organiser as either:

- a trader that combines and sells (or offers for sale) package holidays, whether directly or through another trader
... or
- the trader that, through an online booking process where a travel service is purchased from one trader, transmits the traveller's name, payment details and email address to another trader, and a contract with the second trader is concluded 24 hours after the confirmation of the first travel service

The definition of a retailer is a trader that sells (or offers for sale) packages combined by an organiser - for example, a 'high-street' travel agent, an online travel agent, or someone who arranges travel contracts over the telephone.

'Package'

The major changes in holiday and travel purchases (for example, online, on the telephone or in travel agencies) are covered by the 2018 PTRs.

This is why there are now six definitions of what constitutes a package holiday. In addition, some travellers wanted to select and purchase travel services separately and the EU introduced the LTA.

Let's start with the six definitions of what constitutes a package holiday:

- 1.** A package is created when travel services are combined by one trader and sold under a single contract. These types of packages are traditional packages BUT unlike the previous regulations, there is no mention that the packages must be 'pre-arranged' and they will include 'tailor-made holidays' or where those services are:
- 2.** Sold in a single booking process. A package is created when a traveller has selected from the same point of sale two or more travel services and then agrees to pay for them within the same booking process (this is a 'shopping basket' model where the point of sale could be high street travel agents, websites or telephone sales).
- 3.** Sold at an inclusive/total price. For example, a travel agent or organiser puts together a selection of travel services for the same trip and sells it to the traveller for a total price.
- 4.** Sold as a package (or under a similar term). For instance, 'combined-deal', 'all-inclusive' or 'all-in arrangement'.
- 5.** Combined after the sale of the package allowing subsequent choice (gift-box style packages).

This type of package is a difficult concept. In our view, it relates to arrangements where a trader sells a package that allows a traveller to pick and choose different travel services after they have concluded the contract. For example, a 'Tastes of the Region' package that allows you to choose from a selection of accommodation and a meal at a restaurant, to be selected from options, after the package has been purchased.

- 6.** Sold through a linked online booking process, irrespective of whether the traveller concludes separate contracts.

This includes situations where a traveller purchases different travel services for the same trip through a linked online booking process where the traveller's name, payment details and email address are sent from the first trader they purchase from, to a targeted second trader and a contract is concluded with the second trader no longer than 24 hours after the first service was purchased.

This type of package is created when a traveller goes to, for example, an airline website to buy a flight and on this website is a link to an accommodation provider where the traveller's name, payment details and email address appear. As long as the traveller purchases accommodation within a 24-hour period it will become a package and the airline will become the organiser.

'Travel service'

In order to create a package, you need to sell two or more different travel services, from the four below:

- 1.** Carriage of passengers. This includes flights, trains and coaches.
- 2.** Accommodation. It is important to note that accommodation that is intrinsically part of carriage of passengers is not in scope. For instance, a ticket on a sleeper train where the purpose is to get from A to B and staying on board is a necessary part of that journey, would not constitute a package.
- 3.** Motor vehicle hire. This includes car and motorcycle hire.
- 4.** Any other tourist services. These are services that are not intrinsically part of the carriage of passengers, accommodation or motor vehicle hire but make up a significant part of the package. For example, a traveller books a golf break with a hotel or travel organiser that includes a pre-booking for round(s) of golf, as well as the accommodation. This could be a package. However, a hotel booking for accommodation at a hotel that happens to have a golf course as a facility is not in itself a package. The golf course is simply a facility.

'Linked travel arrangements'

There are two different types of LTA envisaged by the 2018 PTRs:

- 1.** The first type is where a traveller selects and pays separately for at least two travel services during a single visit to a shop (for example, travel agent where the traveller selects and pays for a hotel and then, without leaving the agent, pays separately for a flight) or website (for example, consumer goes on to a website, selects and pays for a flight, and then while still on the website, selects and pays for a hotel).
- 2.** The second type relates to online purchases with different traders. The traveller visits a website and purchases one travel service. They are then 'targeted' with a 'cross-sell' to another website trader and the traveller buys a travel service from that other trader within 24 hours (for example, an airline sells a consumer a flight; in the booking confirmation email, the airline invites them to book a hotel room with a website to go with their flight; the consumer clicks on the link and books a hotel within 24 hours of booking the flight). You will see from the comparison with an online package holiday sale, with an LTA the traveller's name, payment details and email address are not on the second website and have to be added by the traveller and purchased separately.

'The Consumer Rights Act 2015'

This piece of law requires that services provided by traders to consumers should be performed in accordance with the contract, with reasonable care and skill, at a reasonable price.

As a general rule, if something goes wrong with the supply of holidays and travel, consumers can claim their direct losses, but they cannot claim compensation for distress and inconvenience.

However, the law makes an exception for some types of contract, including contracts for package travel. Therefore, as the purpose of a holiday is usually to provide enjoyment and relaxation, a consumer may be able to claim compensation for inconvenience and distress on top of a refund and any other losses if things go wrong.

'The Consumer Protection from Unfair Trading Regulations 2008 (CPRs)'

It is important for businesses to be aware of this legislation as it is used 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.

These Regulations prohibit 31 specific practices that are always considered to be unfair and create further offences for aggressive practices. They prohibit 'misleading actions' and 'misleading omissions' that cause, or are likely to cause, the average consumer to take a 'transactional decision' they would not have taken otherwise.

They apply to commercial practices relating to package holidays and travel services (including websites) before, during and after a contract is made.

Effectively the CPRs prohibit trading practices that are unfair to consumers. There are four different types of practices to consider:

- practices prohibited in all circumstances
- misleading actions and omissions
- aggressive practices
- general duty not to trade unfairly

For the last three practice types above it is necessary to show that the action of the trader has an effect (or is likely to have an effect) on the actions of the consumer in making a booking for a holiday. The test looks at the effect (or likely effect) on the average consumer, which means there is no need for evidence about how any particular individual was affected. As stated above, there are 31 of these 'banned' practices in the Regulations.

A group of adults stayed at a hotel in Blackpool and were appalled by its run-down state. They wrote an online review criticising the hotel's inadequate parking, unsafe electrical wiring, worn-out beds, poor breakfasts and general uncleanliness. The hotel's policy document stated: "For every bad review left on the website, the group organiser will be charged a maximum £100 per review." The Consumer Rights Act 2015 (CRA) addresses unfair terms in contracts. There was a clear CRA offence in this scenario. The trading standards officer investigating pointed out that it was illegal for the hotel to be able to say something bad about the customer for free, but to charge the customer to say something bad about the hotel.

'Misleading availability'

- bait advertising (or 'bait and switch'). This is where a trader misleads a consumer into believing they can buy a package holiday or travel service at a low price when the trader is aware that they do not have reasonable stock available or are not able to supply at that price; this is also where the trader attempts to 'up-sell' to a higher priced product
- falsely stating that a product is only available for a very limited time in order 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 as few sales had been made.

An example of other specific banned practices are added after 'Misleading actions and omissions' below.

'Misleading actions and omissions'

The CPRs prohibit 'misleading actions' and 'misleading omissions' 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 a trader 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 as 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 a trader 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.

In one case, a family booked a stay in a Spanish apartment which was described as being "ideal for families, with a lovely south facing infinity swimming pool". When they arrived at the apartment they discovered that in front of the pool was a 12-foot drop on to the concrete car park below. The family contacted the trader, who offered them compensation and the use of another apartment nearby.

Some other banned practices are:

- 1.** 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.
- 2.** Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation - using the ABTA logo, for example.
- 3.** Claiming a code of conduct as an endorsement from a public or other body which it does not have.
- 4.** Claiming that a trader (including their commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not; or making such a claim without complying with the terms of the approval, endorsement or

authorisation - for example, reference to ABTA.

5. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that they will not be able to offer for supply, or to procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising).

It is a breach of the CPRs to:

- omit material information
- hide material information
- provide material information in a manner that is unclear, unintelligible, ambiguous or untimely.

[Best practice areas >](#)

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