

Section 6. Complaint resolution

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It is a legal requirement that organisers inform their clients that if they have a complaint, they must make it as soon as possible. This includes complaining to the organiser or travel agent if they dealt with the consumer's booking and to the supplier of the service in question - the hotel, for example.

In terms of pursuing a complaint when they return home, organisers can set out a time limit for this, but it mustn't be unreasonably short. Consumers are recommended to set out their complaint within 28 days. This is, however, not a mandatory requirement, which would automatically exclude them from any legal action. However, the organiser may indicate to consumers that if they fail to complain IN RESORT then they may reduce their rights under the booking terms. This is setting out the basic failure-to-mitigate principle which is recognised in law. If the consumer doesn't give you or your supplier the chance to put things right, they may increase their loss and they can't claim any such increased loss back from you in most cases.

The Consumer Rights Act 2015 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, etc. It provides consumers with remedies they can require from the trader if the service provided does not meet the terms of the contract - for example, a reduction in the price paid.

As a general rule, if something goes wrong with the supply of goods and services, 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.

As regards a consumer making a complaint, the Competitions and Markets Authority covered this point in its campaign on fair terms and conditions. They were unhappy with organisers' booking conditions that specify a complaint had to be made by consumers within 28 days of their return from holiday and ABTA has now advised its members to ask clients to complain as soon as possible, ideally within 28 days.

What is a very positive change is the offer of alternative dispute resolution (ADR) for complaints which cannot be resolved. ABTA has provided a number of methods of complaint resolution, including conciliation, arbitration as well as the consumer being able to use ABTA's approved ADR scheme, available through www.abta.com

We have approved their ADR scheme, which is also positive news for consumers booking with their members. Consumers have the choice of ADR or court and nothing should be included that would deny clients the option of taking action in the courts if they so wish.

Consumers can contact the UK International Consumer Centre (UKICC) for advice on their rights under the Regulations. In some circumstances, the UKICC can make contact with the company on behalf of the consumer. www.ukecc.net

"As a general rule, consumers can claim their direct losses, but they cannot claim compensation"

Case study: Misleading description

This complaint concerned a description from a holiday accommodation website, which was thought to be misleading and the CPRs were used to investigate. A complaint was made to the holiday accommodation provider and a successful conciliation process enabled a full refund to be made. The hotel was described as being in "a quiet secluded resort".

Description



The trader had not informed the consumers that there was a major public holiday in the country at the time of their visit, hence the number of people in the hotel pool.

Reality



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