

TRAVEL AGENTS BEWARE. PART THREE

David Grant

In the last article we began looking at what a travel agent's liability would be if the package they sold went wrong. Essentially we examined what the legal position would be if there was a 'lack of conformity'.

Briefly, we got as far as saying that the agent would be liable for defects in the package but the onus was on the traveller in the first place to bring those defects to the notice of the travel agent/organiser and to give the travel agent the opportunity to put things right. If that was not possible the traveller has the option of remedying the problem themselves – at the expense of the travel agent and with the possibility of further compensation.

We now turn to other provisions in Reg. 15. The difference between these provisions and the ones we have already examined seems to be that in the former the lack of conformity can be remedied such that the traveller can enjoy the package they booked - but with these latter provisions the defects are more serious leading to the travel agent having to provide alternative remedies altogether.

15 (8) Where the organiser is unable to provide a significant proportion of the travel services as agreed in the package travel contract, the organiser must offer, at no extra cost to the traveller, suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the contract, for the continuation of the package, including where the traveller's return to the place of departure is agreed.

(9) Where the organiser offers proposed alternative arrangements which result in a package of lower quality than that specified in the package travel contract, the organiser must grant the traveller an appropriate price reduction.

(10) The traveller may reject the proposed alternative arrangements offered under paragraph (8) only if—

(a) they are not comparable to the arrangements which were agreed in the package travel contract; or

(b) the price reduction granted is inadequate.

Where a *significant* proportion of the travel services cannot be provided the travel agent must offer suitable alternative arrangements of an equivalent or higher quality. What amounts to a significant proportion may be a matter of debate. For a couple, the fact that the children's pool at their resort hotel is out of commission is neither here nor there (unless of course the adult pools are overrun with screaming kids) but for a family with three young kids this may be a disaster. And what about the elderly couple who want to spend time on their balcony looking at the sea view but find themselves at the back of the hotel without a balcony and a view of the dustbins?

Should these problems be regarded as significant then the travel agent must provide a solution which is equivalent or better to what the traveller booked or offer a reduction in price. Thus if a three star hotel is overbooked then another three star hotel must be provided. If a three star hotel is not available then the travel agent must either provide an alternative which is equivalent or better, *at no extra cost*, or offer a reduction in price.

In the examples given it may be possible to ensure that one of the pools is designated a child free zone. If possible the family with young children should be moved to an hotel with a children's pool. As for the elderly couple, if the lack of conformity cannot be remedied by moving them to a room with a balcony and a sea view they should be moved to accommodation where they do have the balcony and sea view. If this cannot be done then a price reduction should be offered. How such compensation is calculated will be discussed in a later article.

However more extreme examples can be envisaged. For instance what if the holiday villa near the Maingate at Disney World in Orlando is destroyed by a hurricane or the hotel in Thailand is wiped out by a tsunami. There is nothing in the legislation that says that the travel agent is excused from having to offer an alternative of equivalent or better *if possible*. In such circumstance it may not be possible but if the disaster is more limited, say just one hotel wiped out by a mudslide then the travel agent must still offer an alternative.

If the traveller is unhappy with what they are offered then they have a right to reject what the travel agent proposes but only if the alternative arrangements are not comparable or the price reduction is inadequate. As we have seen in the previous article this can leave the traveller with a dilemma. What if the alternative to the overbooked three star hotel is a four star hotel but in a

different resort altogether away from other members of the family group? The hotel may be better but overall is the alternative comparable? What if the overbooked four star hotel is substituted with a three star hotel but the reduction in price is regarded as inadequate?

In these circumstances if the traveller feels that the alternative arrangements are unacceptable they can terminate the contract and claim compensation in accordance with Reg. 16 which we will examine in a later article.

David Grant

Editor in Chief of the Travel Law Quarterly

[This article is based upon material contained in the forthcoming 6th edition of "Holiday Law" by David Grant, Stephen Mason and Simon Bunce to be published by Sweet and Maxwell in September 2018]