

## **Package Holiday Rights. FAQs.**

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### **What are the Package Travel Regulations and when do they apply?**

As the name suggests the PTR protect you if you have bought a package holiday. They also protect you to a lesser extent if you buy Linked Travel Arrangements (LTA) which are a kind of package holiday lite. LTAs will be dealt with separately.

To qualify for protection under the PTR you have to show that

- You are a traveller
- You have bought a package from an organiser
- You have bought a package

#### *Traveller*

You are a 'traveller' if you are an 'individual who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of these Regulations'.

Basically this means any person who buys a package holiday or who goes on a package holiday. So if Mrs Smith books a package holiday with Zoom Tours for herself, Mr Smith and

their two children James and Katie, they are all 'travellers' and are entitled to the full protection of the PTR.

Likewise, if Mary books a hen party in Ibiza for herself and 10 friends with an organiser, they are all 'travellers' covered by the PTR and they all have rights against the organiser.

### *Organiser*

An organiser is 'a trader who combines and sells, or offers for sale, packages, either directly or through another trader'.

An organiser is what is popularly known as a tour operator but it would also cover travel agents who put packages together. If you buy travel over the internet then these tour operators or OTAs (Online Travel Agents) would also be defined as organisers if they are selling packages.

An organiser must also be a 'trader' – someone who is selling packages in the course of a business, trade, craft or profession. Clearly this would cover tour operators and travel agents who sell packages as part of a commercial business. But if Mary, referred to above, put the package together herself and then collected money from the rest of the hen party she would not be a 'trader' and therefore not an 'organiser'. In those circumstances the rest of the hen party could not sue her if things went wrong.

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### **Do the Package Travel Regulations still apply after Brexit?**

Yes. Minor amendments have been made but they do not directly affect the rights of travellers.

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### **What is a package holiday?**

Traditionally a package holiday was what you bought out of a brochure at a travel agency where the elements of the package, hotel accommodation and flights, had already been 'packaged' together but with the advent of the internet and no frills airlines those days are long gone.

While many people still purchase a package out of a brochure it is now equally easy or even easier to go online and put together your own package from a menu of services offered by online tour operators and OTAs. It is also the case that you can go into a travel agency and they will effectively put a tailor-made package together for you.

As a consequence the definition of a package is now quite extensive.

First of all you have to have purchased a combination of at least two travel services. These are:

- transport (such as a flight, ferry, coach or train. Hotel transfers are probably not included but might be if they are booked and paid for separately and are a long way from the airport)
- accommodation (such as an hotel, villa, caravan, chalet or apartment)
- car rental
- a tourist service (such as a concert or a sporting event or an excursion) where this is a significant part of the holiday either because of its value or because it is an essential part of the trip.

Then you have to show that it was purchased as a combination i.e. broadly speaking you bought all the elements of the package at the same time or within 24 hours.

The following arrangements, assuming they contain at least two elements, amount to packages:

- If a single trader combines the services at your request or based upon your selection before the contract is concluded.

This would cover a traditional package holiday bought from a tour operator where your contract is with the tour operator.

- You purchased the services from a single point of sale and selected them before you agreed to pay.

If you go into a travel agency or to an OTA and they sell you a flight from an airline and accommodation from a hotel with separate contracts for each this would be a package under this definition.

- You are asked to pay an inclusive or total price for all the services you bought.

It doesn't matter if your price is broken down into different elements e.g. for the flight and the accommodation. As long as there is a total or inclusive price it is still a package.

- The services were advertised or sold to you as a 'package' or similar term.

If the trader calls your combination a 'package' then it will count as a package. What is a similar term is open to debate. If you are sold a 'holiday' this might count as a similar term. 'Combined deal', 'all-inclusive' or 'all-in arrangement' might be regarded as similar terms.

- A trader sold you one travel service and then transferred your details, including your payment details to another company with which you then booked another travel service within the space of 24 hours.

This is known as a 'click-through' arrangement and depends upon your payment details being transferred to the second trader rather than having to input them afresh. This might happen on an airline site where, after you had booked the flight, you were prompted to visit a hotel site and within 24 hours you booked the hotel.

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### **What is not a package holiday?**

You have not bought a package if:

- The arrangement lasts for less than 24 hours – unless it included overnight accommodation.
- You buy only one of accommodation, transport and car rental and the other travel service you buy is either not a significant part of the package or it is an intrinsic part of the other service.

- The arrangements are made only occasionally on a 'not for profit' basis
  - If the tourist service was not a significant or essential part of the package
  - You are travelling for business and the arrangements have been put together for you by a trader that does this under a 'general agreement'
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- So for instance a trip to watch a Champions League football match in Barcelona which included both flight and tickets would not be a package if you went there and back in less than 24 hours.
  - If you buy hotel accommodation inclusive of meals that will not be a package because the provision of meals are an intrinsic part of the hotel service. It might be different if the package was part of a 'gourmet weekend' hosted by a celebrity chef
  - Likewise the provision of a lie flat bed on a business class flight or a berth on an overnight ferry trip is unlikely to make the flight or the sailing a package. However a trip on a luxury train like the Venice Simplon-Orient Express or the Blue Train which includes fine dining and sleeping compartments could very well amount to a package.
  - If someone in your choir organises a cost price, not-for-profit, one-off, trip to Verona to see the opera which includes flights, hotel accommodation and opera tickets that would not be a package
  - If you bought hotel accommodation and included in the price was a ticket to a local museum this tourist service would not make a package out of the arrangements unless the ticket was worth more than 25% of the package or it was regarded as an essential feature. For instance if the ticket was for a West End show or a concert at the O2
  - If you are travelling on a business trip to New York including flights and hotel accommodation but this had been put together by a trader that you have, or your employer has, an agreement with to do this on a regular basis.

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### **What information must my tour operator give me before I travel?**

Before you enter into a contract you must be given information on:

- Your destination
- Your holiday dates and time of departure and return

- The type of transport
- Your accommodation and its tourist category
- Any meals included in the package
- Any visits, excursions or other services included in the total price agreed for the package
- Transfer details
- Whether the package is suitable for persons of reduced mobility and, if you request it, precise information on the suitability of the holiday for you taking into account your needs.
- Contact details of the organiser and, if applicable, the retailer
- The total price of the package, including any taxes fees and charges, and how it is to be paid for
- General information on passport and visa requirements including approximate periods for obtaining visas and information on health formalities, of the country you are going to.
- Information that you may terminate the contract at any time before the start of the package and any penalties payable
- Information on optional or compulsory insurance to cover the cost of termination of the contract by you or the cost of assistance, including repatriation, in the event of you suffering an accident, illness or death.

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### **Can my tour operator change the price after I have booked?**

Your travel company can only increase the price of your booking if they have specifically included this in their booking conditions and only in certain circumstances.

The price can only be increased for:

- Increases in the price of fuel or other power sources
- Increases in taxes or fees such as tourist taxes, landing taxes or embarkation or disembarkation fees at ports and airports; and
- Exchange rates relating to the package

If the travel company has reserved the right to increase the price in these circumstances you have a corresponding right to a reduction in price if these elements of the price decrease e.g. the exchange rate moves in your favour.

If the price rise is more than 8% of the total price of the package you have the right to terminate your contract without penalty or accept a substitute package if the travel company offers you one.

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### **What if my tour operator makes changes to my package before I travel?**

A travel company should not make significant changes to the 'main characteristics' of your package unless it is for reasons beyond their control e.g. hurricanes, ash clouds, civil unrest, coronavirus etc etc.

A significant change might be

- A change of hotel
- A change of date
- A change of resort
- Missing out a cruise destination
- An increase in price of more than 8%

If such a change is made then your travel company must tell you, without undue delay, the details of the change and any impact on the price and inform you if they are prepared to offer you a substitute package of equivalent or higher quality.

You must be given a reasonable time within which to reply.

You then have a choice

- You can accept the changes, or
- You can terminate the contract

- You can take the substitute package

If the changes, or the substitute package, are of lower quality you are entitled to an appropriate price reduction.

If you choose to terminate the contract your travel company must refund all the payments you have made within 14 days.

If you do not reply within the specified time your travel company must contact you again and if you still do not reply they may terminate the contract and refund all your payments within 14 days.

Apart from the refund you are not entitled to further compensation because the changes were caused by reasons beyond the control of your travel company.

However if they cancelled the package for reasons within their control you would be entitled to compensation.

Even if the change is insignificant your travel company can only make the change if the contract allows it and compensation would still be payable if it was for reasons within their control.

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### **What if things go wrong on my package while I am away?**

A whole variety of things could go wrong with your package:

- Delays at the departure airport
- Change of resort
- Change of hotel
- No balcony
- No sea view
- Filthy dirty rooms
- Change of meal plan from waiter service to buffet

- Children's pool closed etc etc

In these circumstances your travel company cannot blame the airline or the hotel, the fault is their responsibility however the onus is on you to inform your travel company as soon as possible.

It is then the responsibility of your travel company to put things right unless

- It is impossible, or
- It is disproportionately costly

Even so you will be entitled to compensation unless it was for reasons beyond the control of your travel company, or it was your fault.

Even if your travel company does put things right you be entitled to compensation for any period during which there was a problem e.g. if you were promised a room with a balcony and it took two days for this to be sorted out you would get compensation.

If your travel company does not put things right or an immediate remedy is required you are entitled to take things into your own hands and sort it out yourself – and be able to claim compensation for any expenses you incurred.

If there is a significant problem with your package your travel company must make suitable alternative arrangements e.g. by moving you to another hotel. The alternative arrangements must be of an equivalent or higher quality. If necessary your travel company must take you home again if this is agreed.

If the alternative arrangements are inferior you are entitled to a price reduction

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## **How much compensation do I get if my package goes wrong?**

If you are entitled to compensation for a holiday gone wrong you can claim under the following headings:

- Difference in value
- Out of pocket expenses
- Physical discomfort
- Distress and disappointment
- Personal injury

### *Difference in value*

For this head of damages you have to work out the difference in value between what you were promised and what you actually received. In some cases this might be easy e.g. if you were given a room without a balcony and a sea view it would be possible in many cases to look in the travel company's brochure or website and see the difference in price. Likewise for a change of hotel. Other examples may be more difficult to measure e.g. the difference between waiter service and self service or between having three pools and a children's pool and only having one pool available for everyone but some kind of estimate should be attempted.

### *Out of pocket expenses*

If, for example the food was so bad as to be inedible, or the kitchens had been closed because of poor hygiene standards and you were compelled to eat out then you could claim for the meals you had to pay for. However it is important to keep all your receipts. You would not be able to claim for Michelin restaurant meals if you were only staying at a three star hotel.

If your tour operator changed your hotel from being adjacent to the beach to a considerable distance away you could claim for taxi or bus fares.

You should also be careful not to be claiming twice for the same thing. You cannot claim for difference in value because there was no catering if at the same time you are claiming for having to eat out.

### *Physical discomfort*

There are a small number of cases where holidaymakers were given compensation for physical discomfort - as opposed to personal injury. For instance if your self catering accommodation did not have enough beds for all your family to sleep on and you had to sleep on an uncomfortable couch you could claim for this. In one case a couple were given compensation for the physical discomfort of having to sleep on a park bench on the first night of their honeymoon because their hotel had been overbooked.

### *Distress and disappointment*

Damages for distress, disappointment and frustration have been available in holiday cases since 1973. How much you will get depends on a number of circumstances:

- Special occasion holidays will attract more damages than run of the mill holidays
- Damages for distress and disappointment are not necessarily linked to the price of the holiday
- Damages for the 'poor' may be more if the holiday is so expensive they might not be able to afford another one
- Damages depend upon the degree of expectation and 'it is a question of fact and degree in each case'

Special occasions could include weddings, honeymoons, anniversaries, retirement world cruises, family reunions, last family holiday before the children leave home. So if you are on your honeymoon you are likely to get more damages than if you were on your third family holiday in a year.

It is difficult to give precise guidance on how much you will get for distress and disappointment for a spoilt holiday but unless the holiday is truly disastrous you are unlikely to get the price of the holiday back even taking into account the other heads of damage.

### *Personal Injury*

It is unfortunately the case that some holidaymakers suffer from personal injury on holiday e.g. from outbreaks of norovirus or transfer bus accidents or walking through glass patio doors or falling off balconies with low walls.

Advice on personal injury is beyond the scope of this guide so if you have suffered a serious personal injury on holiday then you should take expert legal advice from firms that specialise in this area.

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### **What if my tour operator goes bust?**

The Package Travel Regulations provide comprehensive protection if your travel company goes bust.

Broadly speaking every travel company must be part of a scheme that, if they go bust, will either provide a full refund for you, or, if you are abroad at the time, will bring you home.

The most important of these schemes is the ATOL scheme, the Air Travel Organiser's Licence scheme. This covers all packages with an air travel element and is administered by the CAA, the Civil Aviation Authority.

There are other schemes for non-air packages run by ABTA, BCH (Bonded Coach Holidays), TTA (the Travel Trust Association) and ABTOT (the Association of Bonded Travel Organisers Trust)

It is important to note however that, subject to what is said below about Linked Travel Arrangements, insolvency protection only applies to *package holidays*, it does not cover independent arrangements or contracts for single travel products.

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## **What is a Linked Travel Arrangement?**

A linked travel arrangement (LTA) is like a 'package holiday light'. It bears a strong resemblance to a package but it does not give you the same protection.

To have an LTA you must have bought at least two travel services within a 24 hour period but have paid for them separately.

### *Examples*

- You may visit a travel agent and purchase a flight and pay for it then and there but then, as a separate transaction, buy hotel accommodation from the same travel agent. However if the travel agent describes this as a 'package' or has clearly 'combined' the travel services this would be a package.
- You may buy the flight and then return the next day to purchase the accommodation.
- You may visit an accommodation booking site and buy hotel accommodation and then click on a link to a flight booking site and buy a flight. This would be an LTA if you had to enter all the flight details, your personal details and your payment details again. If you did not have to re-enter all these details this would be a 'click-through' package.
- You purchase a flight from a travel agent or OTA and then within 24 hours they send you an email prompting you to purchase car hire, which you do separately, this would be an LTA.
- You purchase a flight from an OTA and pay for it at once and then return to the site within 24 hours and buy hotel accommodation and pay for it separately this would be an LTA.

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## **What protection do I get if I have bought a Linked Travel Arrangement?**

The protection available to travellers who have bought an LTA, organised by a 'facilitator', is limited to cases where the facilitator themselves have become insolvent. The facilitator, unlike a package travel organiser, has no liability if any of the travel services are defective in any way.

The only protection is if the facilitator themselves goes bust and the traveller loses out as a result.

So for instance if the facilitator has taken a payment for your flight or hotel and then goes bust and they still hold your money they must protect you against their own insolvency. If they go bust after they have passed your money on then there is no problem – you still have contracts with the service providers, the airline or the hotel.

However if it is the service provider who goes bust, after they have received your money, you have no rights against the facilitator. You may be lucky in these circumstances if your facilitator has not yet passed the money on – in which case you will get a refund.

The LTA facilitator must provide protection against their own insolvency by using one of the schemes discussed above for package travel organisers.

One extra bit of protection exists if it is an airline that has arranged the LTA and it is the airline that goes bust while you are abroad. In these circumstances the insolvency protection put into place must be sufficient for you to be repatriated and to pay for your accommodation while you wait to be repatriated.

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For a copy of the Regulations click [here](#) and, for the really brave consumer, click [here](#) for the Brexit amendments.

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