I HOLD THAT THE MORE HELPLESS A PERSON THE MORE ENTITLED THEY ARE TO PROTECTION[1]

Roger Bray

Though it passed almost unnoticed except by customers directly affected and travel industry insiders, the decision by Lowcostholidays to shift its business base from Britain to Spain was a seismic event in the development of protection for consumers booking holidays by air.

The move coincided with debate over the European Commission's blueprint for updating its 1990 Package Travel Directive, which includes a proposal to make the cross border sale of holidays easier. The Commission cites a fictitious operator in Luxembourg who wants to sell packages in Belgium, France and the Netherlands but can't, because they won't accept the protection regime in the company's home country.

The Commission cites a fictitious operator in Luxembourg

In the case of Lowcostholidays we have an operator based in Spain, wanting to sell holidays in the UK. To the lay eye it would seem that under current EU law the UK authorities would be justified in taking the same view as the three countries in the EU example. I should add here that, after some initial confusion the Civil Aviation Authority confirmed that customers who had booked before the operator transferred its business on November 1 would continue to be protected under Its UK ATOL certificate but that any protection for those booking after that date would be provided by the Spanish authorities.

According to the Authority, which issued that ATOL, Lowcostholidays was selling holidays under the recently introduced 'flight plus' rules in Britain but in Spain it will be selling them as packages. Flight plus protects consumers against insolvency but doesn't cover all the other elements of the Package Travel Regulations such as the right to cancel if an essential part of the holiday is changed.

So where's the problem, you might wonder? Aren't Lowcostholidays customers getting better protection as a result of the move than they would have received if the company had stayed here? That's a tricky question to answer.

In Spain EU directives are adopted by Madrid but implemented regionally. The region in question comprises the Balearic Islands. Under EU law, of course, travellers must be reimbursed if an operator fails before they depart. How easy would it be for them to secure that reimbursement if they had to deal with a foreign authority? The law also requires that that they must be repatriated in the event of a failure while they are on holiday. But where to? Harking back to the Commission's example, it might not be such a problem if holidaymakers from Luxembourg were flown back to, say, an airport in Belgium. But what would happen if a company based in Mallorca –

1 With apologies to Mahatma Ghandhi.

carrying passengers living in Britain – were to go under. Would the Balearic Island Government be required to organise repatriation to British airports? Where would it find the aircraft? How much expertise do the authorities there have in such emergency situations, compared with the UK CAA?

In theory a single, mutual recognition of protection regimes between EU member states may look attractive. In practice it would run counter to a priority long recognised in London and Brussels, which is to make protection simpler to understand for travellers. Imagine a future in which consumers have a choice of booking with operators based in three or four different countries, all offering the protection required by European law but all interpreting that law in slightly different ways. The result would be more, rather than less, confusion.

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One way of dealing with the problem of cross-border sales is through bi-lateral agreements between states, though for some in Brussels this may sound a retrograde note, evoking memories of air service bi-laterals in the dark ages before the single market in air travel. This would at least allow authorities in one country to thrash out agreed mechanisms for refunds and repatriation. What such agreements cannot do is ensure that the best expertise available is employed in ensuring that, whenever possible, companies go under at relatively quiet times of year, when the damage to holidaymakers is least severe. This is something Britain's CAA has become adept at over the four decades or so since Court Line, owner of when was then the UK's largest tour company, Clarksons, collapsed slap in the middle of the summer peak. It should not be forgotten that even if consumers are guaranteed to get their money back when operators fail, they still often face disappointment that a carefully chosen and much looked forward to holiday now won't happen as originally planned.

The mutual recognition proposal is not the only flaw in the draft directive. What exactly is an 'assisted travel arrangement'? Does it include sales made on airline websites where a customer clicks through to book a hotel or rental car under a separate contract? Some experts think it does but it's not at all clear to me. Where does responsibility lie for organising protection? And why place an absurd arbitrary minimum value, i.e. 20% of the holiday price, on an additional element which, sold with a flight, turns the arrangement into a package?

All these questons gather greater gravity in light of noises from Government suggesting ministers will be reluctant to 'gold plate' new EU regulations for the better protection of UK consumers. Better make sure that they get it right to start with.

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