



HOW FAR ARE SCHOOLS RESPONSIBLE FOR THE TRIPS THEY OPERATE?

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Background

As society has become more mobile in the past 30 years, one of the interesting trends has been the increased popularity of school trips. In the 1970s, if school children were lucky, they might have the chance of an occasional day out, to a museum or the theatre, and very occasionally, they might also participate in a foreign exchange visit, particularly if they were studying languages.

Increased prosperity, coupled with ease of travel has seen the growth of significant numbers and varieties of school trips, particularly for those in private education. The Independent Schools Council, representing the independent schools sector calculates that there are currently approximately 625,000 children being educated in independent schools, amounting to around 6.5% of the total number of school children in the UK¹. Whilst state school pupils may have less opportunity to travel, there are also numerous trips arranged by those schools as well.

School trips have a variety of purposes and destinations. Looking at the school attended by my children, in the 2014/15 academic year, there are around 20 overseas trips planned, which include a mixture of sports teams travelling on tour – the senior rugby team are due to visit Italy, whilst the senior football team are scheduled to visit the USA. Subject related trips include the opportunity for history students to visit the Normandy and Belgian battlefields; politics students are due to visit Washington; and language students are scheduled to visit various locations in France, Germany and Spain.

My children's school is no doubt typical, in that payment is made to the school for the trip, and parents and pupils simply see the itinerary of the trip at some time before they are due to travel.

In most cases, school trips pass off uneventfully, and parents (and schools) probably give no thought at all to any issues of liability and responsibility for the delivery of the travel arrangements. This is perhaps surprising, as schools tend by their nature to be particularly risk averse, and it is quite likely that many schools are exposing themselves to potential claims if things go wrong.

1. More information can be found at <http://www.isc.co.uk/research>

The arrangements

School trips come in a variety of forms, and this article is focusing on those trips to overseas destinations. A variety of different forms of travel arrangements may happen – some involve the pleasure of long coach journeys, ferry crossings over the English Channel or North Sea, or the use of the Channel Tunnel, whereas a number of trips involve flights.

Furthermore, in some instances, schools outsource the full organisation of their trips to tour operators, and in other cases, some of the arrangements, typically ground handling in the destinations, are outsourced.

It is however commonplace for payment for school trips to be made directly to the school, and increasingly common for that payment to be collected online, through ParentPay or similar online payment portals.

The Legal Position

Probably the simplest and clearest position arises when a third party tour operator is used to provide all the services as part of the school trip. Provided that the school makes clear at the time of booking that they are acting as agent for the tour operator, and passes on relevant documentation from the tour operator, then they can receive payments as agent for that tour operator. It would however be interesting to know how many schools have ever passed on copy invoices or other documents to parents. In most cases the bookings made will be a group booking, with the teachers typically receiving free or reduced price places, which may well be subsidised by the parents as part of the cost of the trip – and in those circumstances, the school may be reluctant to make this position transparent to the affected parents.

In the event that no documentation is passed on to the parents, then presumably, the school has effectively become an agent for an undisclosed principal – and regular readers of this Journal will immediately be able to remember the landmark decision of *Hone v Going Places Leisure Travel Ltd*². That case made it clear that if an agent chooses not to disclose the identity of the principal, the agent may end up standing in the shoes of the principal, and having to accept responsibility for any of their acts or omissions – something that schools would be anxious to avoid.

The position of a school becomes even messier if they choose to make some or all of the arrangements themselves. It is increasingly commonplace for schools to book flights online, even if they choose to use a tour operator to deal with the ground handling arrangements in the destination.

Issues arise with this type of arrangement both under the ATOL scheme, for those trips which include flights, and under the Package Travel Regulations for all types of trip, whether using coach, air, rail or ferry.

2. [2001]EWCA Civ 947 – it should be noted that this is the Court of Appeal judgment, and the issues relating to undisclosed agency were not appealed from the first instance decision.

The ATOL Regulations

A number of protections are established under the ATOL Scheme to protect payments made by individuals to travel providers. Probably the most important and relevant of these are that no one should make available flight accommodation unless they are the operator of a relevant aircraft, they have the benefit of an exemption or they hold an ATOL licence. There are a number of exemptions set out in Regulation of the 2012 ATOL Regulations, and in addition, a number of individual exemptions have been granted. Whilst there is a specific exemption (05/2013) which applies to those making available seats to employees of schools, that exemption does not go further, and exempt those making available seats to pupils of schools. As such, any school trip which includes a flight should fall into the ATOL Scheme, and the organiser – whether that be the school or someone else, is obliged to comply with the scheme rules.

It is not my intention to go through those rules in detail here, simply to point out that one of the most fundamental requirements now imposed under the ATOL scheme is that any ATOL protected customer should receive an ATOL Certificate at or about the time the booking is made, evidencing their protection, as well as providing evidence of the amounts paid for the protected travel arrangements. This is the case whether the arrangements sold are a fully protected ATOL product or a “Flight Plus” arrangement, which might be the case if a school is obtaining components from different parties.

As a parent, who has paid for several air inclusive trips through my children’s school over the past two years, since the introduction of ATOL Certificates, I have yet to receive any ATOL Certificate in relation to any school trip, and I suspect that I am not alone in this regard.

The Package Travel Regulations 1992

Most readers will be familiar with the Package Travel Regulations, so I do not propose to recap on all the relevant definitions. However, as a reminder, the Regulations do define an “Organiser” as “the person who, *otherwise than occasionally*, organises packages and sells or offers them for sale, whether directly or through a retailer”.

The key words in this definition from a school perspective are those emphasised – “otherwise than occasionally”. The then Department for Trade and Industry (DTI), now BIS, after several name changes, published guidance in November 2006 on the Regulations³. Whilst there are no specific questions on this issue, the opening question in the guidance is both important and relevant in this context.

“Question 1: From time to time I put together a holiday which I sell to a few friends and acquaintances. Am I caught?”

Answer: Not if you do so only occasionally. The Regulations do not define what constitutes “occasionally”, but it would be prudent to assume you are subject to the Regulations if you organised the package on a regular basis, even if it is done infrequently. (See definition of an “organiser” in regulation 2(1).)”

As mentioned earlier, the school attended by my children have arranged 20 overseas trips in the current academic year. It is very difficult to conceive that the school would be able to

3. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49791/bis-06-1640-package-travel-regulations-question-and-answer-guidance-for-organisers-and-retailers.pdf

argue successfully that they were an occasional organiser, and therefore outside the scope of the Regulations.

The Regulations create both civil responsibility and certain criminal liabilities. Again, most readers will probably be familiar with these, but as a reminder:

The particular criminal obligations are created by the following Regulations:

- Regulation 5: specifying information which must be provided in brochures and other advertising material
- Regulation 7: information to be provided before a contract is concluded
- Regulation 8: information to be provided in good time before travel
- Regulation 16: evidence of financial protection and security
- Regulation 22: Making false statements in relation to a specific form of financial security – and in particular in relation to trust accounts.

It would be enlightening to learn how many schools are able to demonstrate compliance with Regulation 16 in particular.

It would also be very interesting to learn how many, if any, schools, do comply with the financial protection obligations of the Package Travel Regulations, either by the creation of a trust account, or by some other means. I would suspect that the answer would be that very few choose to do so.

Whilst it might be argued that this is primarily a theoretical issue – schools are unlikely to be unable to honour their obligations due to financial failure – and certainly state schools will almost always be backed up by their local authority, it is not beyond the bounds of possibility that a private school may experience financial difficulties – and in practice, should the position be any different for a school than for a major tour operator, who are equally unlikely to fail.

So what does this mean in practice?

In most instances, it is likely to make little real difference whether or not schools choose to comply with their obligations under the ATOL Regulations or Package Travel Regulations, although in the absence of any specific exemptions for schools, there appear to be no good reason why they should not comply. It is more likely that any failures arise from ignorance, rather than from a deliberate choice to ignore the law.

However, things can go wrong during school trips, and during the last year, I saw this in practice, in what could probably make an interesting exam question for students in identifying the legal position and possible breaches of various Regulations. Fortunately, most parents are understanding, and choose to take matters no further with their school, but it is possible to imagine in this increasingly litigious society that it is only a matter of time before a school faces a claim for a disrupted school trip.

The Impacts of a Flight Delay on a school trip

In April 2014, pupils in the sixth form at my children's school studying History or Politics had the opportunity to take part in a school trip to Russia. The trip included flights to

Moscow, some nights accommodation in Moscow, an overnight train to St Petersburg, a short stay in that city and then return flights from St Petersburg to the UK. Both outbound and inbound flights were with a major international carrier operating via Amsterdam. The school made a group booking for those flights directly with the carrier concerned. The ground arrangements for the party whilst in Russia were contracted to a specialist tour operator.

It should be noted that none of this information was given to parents at the time the booking was made, and payments were simply made to the school for the full cost of the trip. As parents, we were only informed of the actual arrangements at a meeting hosted by the school to report on the final arrangements around one month before departure. At no point were we provided with ATOL Certificates or any other documentation in relation to the flight – the children were simply asked to arrive for check in three hours prior to departure, to enable electronic check in to take place in a timely fashion.

After check in, and shortly prior to the departure time, it became clear that the aircraft had a technical problem, and would be unlikely to depart on time. The party had a three hour connection in Amsterdam before their onward flight to Moscow, and the airline only operated two flights daily from Amsterdam to Moscow, so it was unlikely that if the connection was missed that the party (of around 30 pupils and staff) would be able to get on the second flight. In the end the total delay on departure from the UK was approximately 6.5 hours, resulting in a missed connection in Amsterdam, with the airline rebooking the group on a flight departing the following morning from Amsterdam. To be fair to the airline, they arranged accommodation for the party at a hotel in Amsterdam, and successfully made the rebooking. However, this meant that the planned arrangements for the first evening and second morning had to be scrapped, definitely reducing the value of the trip to the participants.

Following the return of the group to the UK, the school made a request for compensation under Regulation 261 to the airline, and they replied to the effect that whilst they would consider this, individual travellers had to claim separately. Whilst it is likely that any tour operator would probably attempt to address a flight delay claim in the same fashion, it would be surprising if the school ever considered that it might have a prima facie liability for the flight delay claims.

Furthermore, it was clear that the participants on the trip did lose part of their booked and paid for itinerary. No consideration appears to have been given by the school to the impacts of Regulation 14(2) of the Package Travel Regulations – a significant part of the contracted services were not provided, and compensation is payable, where appropriate. Even if no parent has sought compensation, it is unlikely that the school would have considered whether it had any obligations to compensate in this instance.

Whilst one feels a level of sympathy for the school, in that in this instance it was clear that the problems which occurred were outside their control, that is fundamentally no different to the situation that tour operators frequently find themselves in.

Is it too much to ask that schools do start recognising their potential exposure in this area, and take appropriate steps to ensure that they are compliant? At the very least all schools should be able to document properly the arrangements they are selling.

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