

THE DIGEST



NEWS AND RECENT DEVELOPMENTS IN LAW AND PRACTICE IN THE TRAVEL INDUSTRY

Civil Aviation Authority

The UK Civil Aviation Authority (CAA) is advising British Muslims planning to make the Hajj pilgrimage to make sure they get an ATOL certificate when booking their trip, to protect themselves against the risk of their travel company going bust.

The CAA's advice comes after incidents in recent years when customers have paid out for Hajj travel packages with companies not licensed by the ATOL scheme, only to lose their money when something goes wrong with the company. There have also been a number of reports of Hajj package providers claiming to be ATOL-protected, but not holding ATOL licences.

With over 20,000 British Muslims expected to make the Hajj pilgrimage this year, the CAA is now advising them to check for ATOL protection when they book their Hajj package for this October to ensure people have the peace of mind that their money is safe.

(Source: CAA, 7 June, 2013)

Office of Fair Trading

The OFT has opened a consultation on commitments proposed by Booking.com B.V. (Booking.com), Expedia Inc (Expedia) and InterContinental Hotels Group plc (IHG), designed to address its competition concerns in relation to the online offering of room only hotel accommodation bookings by Online Travel Agents (OTAs).

The three businesses under investigation are proposing to address the OFT's concerns by giving formal

commitments that would relax existing restrictions so that OTAs can provide discounts on the rate at which room only hotel accommodation bookings are offered. Under the proposed commitments, OTAs would be free to use their commission revenue or margin to fund discounts to consumers who meet certain criteria.

These proposed commitments follow an OFT Statement of Objections issued on 31 July 2012. This alleged that Booking.com and Expedia each entered into separate agreements with IHG which restricted each OTA's ability to discount the rate at which room only hotel accommodation bookings are offered to consumers.

The OFT limited the scope of its investigation to a small number of major companies, with a view to achieving a swift and effective outcome. However, the investigation is likely to have wider implications as the alleged practices are potentially widespread in distribution arrangements in the industry.

(Source: OFT, 9 August, 2013)

ATIPAC

The Air Travel Insolvency Protection Advisory Committee (ATIPAC) has praised the impact of last year's changes to the ATOL scheme, calling the ATOL Certificate a potential "game changer". However, the Committee is calling for further action to bring total financial protection for consumers.

In its annual report the Committee welcomes the changes brought in through ATOL Reform. The Committee believes the changes mark a significant step towards clear and total financial protection,

with the certificate making a particular impact on consumer awareness. The report also praises the travel industry for the way it has supported the changes, and shown resilience despite the challenges it has faced in recent years.

However, despite the positive impact of the ATOL Reform, the Committee believes there is still more to be done to make sure financial protection remains in line with how the travel market develops in the future.

(Source: ATIPAC, 25 July, 2013)

Air Travel Trust

In its annual report the Air Travel Trust (ATT) has published its financial statements for the year ended 31 March 2013, which reveal the fund has returned to surplus for the first time since 1996.

The report shows that the ATT received £48.1m in ATOL Protection Contributions (APC) from 19.2m passengers during 2012/2013, up from £42.6m from 17.3m passengers in the previous year. The report also shows there were only 11 ATOL failures during 2012/2013, representing an estimated cost to the ATT of £844,000. This was down from 23 failures in 2011/2012, at a cost of over £14m.

As a result, the ATT fund is now just over £18m in surplus – the first time the fund has been in surplus since 1996. This follows several years with few ATOL failures, and the implementation of key reforms to the ATOL scheme that has increased its coverage through the introduction of Flight-plus in April 2012.

The key figures in the report show:

- Status of the ATT fund as of 31 March 2013: £18m in surplus
- Status of the ATT fund as of 31 March 2012: £18.5m in deficit
- Total amount received in ATOL Protection Contributions (APC): £48.1m
- Total protected passengers 2012/2013: 19.2m
- Number of ATOL holder failures: 11
- Number of protected passengers repatriated: 37

- Number of protected passengers entitled to a refund: 1,354
- Estimated cost of failures to the ATT: £844,000

(Source: ATT, 20 May, 2013)

EU Commission

Following a meeting of NEBs (National Enforcement Bodies) held on 12 April 2013 the European Commission has published a preliminary list of circumstances that might qualify as 'extraordinary circumstances' for the purposes of Regulation 261/2004 on denied boarding etc. The full document can be found at: <http://ec.europa.eu/transport/themes/passengers/air/doc/neb-extraordinary-circumstances-list.pdf>

Interestingly the document is immediately qualified by the following words: "This document is for information and guidance only. The content of this document does not represent a binding opinion on the European Commission." It might also have been wise to add that it is not binding on the CJEU which has decided a series of cases on Reg. 261/2004 which are arguably more favourable to passengers than this advice from the Commission. As such it represents a retrograde step for consumers of air travel.

The document contains a comprehensive list of potential extraordinary events preceded by these qualifications:

"Non-exhaustive and non-binding list of extraordinary circumstances resulting from the work of the National Enforcement Bodies (NEB) for the application of the current Regulation (EC) 261/2004

Note 1: An extraordinary circumstance is defined by the following general principle: the event has to meet the three criteria, unpredictable, unavoidable and external.

Note 2: Whilst each of the circumstances listed below is likely to constitute extraordinary circumstances for the purpose of the Regulation, national enforcement bodies are required to examine individual cases to determine whether distinguishing factors exist.

Note 3: That in each of the following examples, the air carrier must provide proof of the circumstances alleged and it must also clearly demonstrate how these circumstances resulted in the flight disruption.

Note 4: After demonstrating the existence of extraordinary circumstances, the air carrier must also explain what reasonable measures it took to subsequently avoid the disruption.

Note 5: The incident needs to be evaluated in the context of the category to which it relates."

(Source: EU Commission, 12 April, 2013)

European Commission

The European Commission has published a series of Frequently Asked Questions in relation to package travel and the proposals for a new PTD (which are examined at length in this issue).

"Why is the Commission making this proposal?"

More and more people book their holidays online, through different online operators. This has revolutionised the travel market, but means that holiday makers are not always sure of protection if something goes wrong. Around 23% of consumers book pre-arranged traditional package holidays, while 23% buy customised holidays (combined travel arrangements) which are put together by one or more commercially linked traders.

The current rules on package travel either simply do not cover such arrangements, or do so only in an ambiguous manner, leaving consumers unsure of their rights and traders unclear of their obligations.

In a recent survey, 67% of EU citizens mistakenly thought that they were protected when buying such travel arrangements. This has led to confusion amongst consumers and unfair competition between operators.

Why does the 1990 Directive on package travel need updating?

The current Directive refers to "pre-arranged" combinations of travel services and does, therefore, not explicitly cover packages which are combined at the consumer's request. In the *Club Tour-Case* (Case C-400/00), the Court of Justice of the European Union clarified that the combination of tourist services by a "bricks and mortar" travel agency at the specific request of a consumer falls within the scope of the Directive if the consumer pays an inclusive price and there is a contract between the consumer and a travel agent.

However, this ruling failed to provide full clarity as to which travel arrangements the package travel legislation covers. Also, the ruling does not provide an answer to the question of who is liable if there are different parties (retailer and/or multiple traders) and in cases where the seller is acting as a mere intermediary or where customised combinations of travel services are sold on-line.

The Commission is thus proposing to update EU rules on package travel to get rid of any legal grey zones and make it clear when you are covered and when you are not.

What are the 10 Key Rights under the current, 1990 Package Travel Directive?

- Travellers receive all necessary information about the holiday before signing the contract.
- There is always one party (either the retailer or the organiser: the name and address will always be specified in the contract) that is liable for the correct performance of all the services included in the contract.
- Travellers are given an emergency number or a contact point where they can get in touch with the organiser or the travel agent.
- Travellers can transfer the package to another person, if they cannot leave on holiday themselves.
- The price of the trip cannot be changed later than 20 days before departure, and before that

only in very limited situations.

- Travellers may cancel the contract and get their money back if any of the essential elements of the travel package has been changed.
- If, before departure, the trader that is responsible for the holiday cancels the package, travellers can get a refund and compensation, if appropriate.
- If, after departure, important parts of the package cannot be provided, alternative arrangements have to be made, at no extra cost, so that travellers can continue their holiday.
- The right to prompt assistance if a traveller is in difficulty.
- If the trader responsible goes bankrupt, pre-payments will be refunded and, if the trip has started, travellers will be repatriated.

What will change with the revised Directive?

The aim of the revised Directive is to extend the current protection for traditional, pre-arranged packages to new combinations of travel services. If those new combinations of travel services feature the characteristics associated with packages, the consumer is protected under the new rules.

For example, a combination that includes all services in one contract or where all services are sold at an inclusive price, will be considered a customised package, irrespective of whether this combination of travel services is sold online or off-line. Such customised packages will be protected in the same way as traditional, pre-arranged packages.

This means, in particular, that the ten key rights under the 1990 Package Travel Directive would also apply to customised packages.

In addition, consumers who buy other types of customised travel arrangements will receive clear information that what they are buying is not a package and that only the individual service providers are responsible for the individual travel service. Travellers buying such products will still have a guarantee that they will get their money back and will be repatriated, in case the seller, the

carrier or any other service provider goes bankrupt.

What exactly are the differences between 'packages' and 'other customised travel arrangements' and why does the proposal distinguish between these categories?

There are four distinct categories of travel arrangements:

1. Independent Travel Arrangements (54%)

This is a travel service, such as a flight, accommodation or car rental that is purchased as a stand-alone product. These continue to remain outside the scope of this Directive. Other sectoral legislation such as the Passenger Rights Regulations or general EU consumer protection instruments, including the Consumer Rights Directive or the Unfair Commercial Practices Directive apply.

2. Pre-arranged packages (23%)

This is a combination of travel services bundled in advance by an organiser and consisting of at least two of the following services: (1) carriage of passengers, (2) accommodation and (3) other tourist services not ancillary to passenger transport or accommodation and accounting for a significant proportion of the package (e.g. car rental). These remain covered by the new Directive.

3. Customised Packages (20%)

This category includes combinations of travel services where two or more services are purchased either from the same supplier on one website or at one high street travel agent under one contract, but where the consumer is free to choose the different components.

This category also includes combinations of travel services where two or more services are purchased from multiple suppliers under separate contracts but where the consumer's name or personal details are transferred directly between the traders or where an inclusive or total price is charged. An example would

be a travel search website of an online travel agent which allows you to search for flights and hotels at the same time and sells you the two contracts (accommodation and flight), each with a different trader, at an all-inclusive price. These will be considered as packages by the new Directive and therefore be covered, meaning the sole or main trader will be considered as an organiser who shoulders liability under the terms of the Directive.

4. Other customised travel arrangements (Assisted Travel Arrangements) (3%)

This category covers combinations of travel services which are sold by a high street/on-line travel agent acting as an intermediary facilitating the putting together of the travel arrangements for the purpose of the same trip or holiday, but which are clearly sold as separate services in distinct transactions. An example would be when a consumer purchases an airline ticket from a web site and then is invited to "click-through" at the latest when that first booking is confirmed to the site of another trader to procure a further travel service (hotel accommodation or car-hire) at the chosen holiday destination.

For these types of travel arrangements, the individual service providers are responsible for the proper performance of the separate contracts, but the retailer who facilitated the travel arrangements must provide clear information about this and must also provide the right to a refund of pre-payments and, when the traveller has already departed on vacation, a right to repatriation in case of the insolvency of one of the service providers.

What are the advantages for consumers compared with the existing legislation?

- *Better protection of the 120 million holiday-makers buying customised packages* or other customised travel arrangements. Customised holidays are twice as likely to have problems as compared to traditional, pre-arranged packages. Also, if something goes wrong, the extra cost for a consumer who buys a customised travel arrangement is on average €600 today, three times as much as the extra cost for a pre-arranged package.
- *Clear information for all consumers*, who will be told exactly what kind of product they are buying (a package or another customised travel arrangement) and what kind of protection is included in their travel arrangement.
- *Fairer and more predictable prices* for package travellers, with stricter controls on price surcharges (and a 10% cap on price increases) and a requirement to pass on price reductions in equivalent circumstances.
- *The possibility for package travellers to address complaints* or claims directly to the retailer (travel agent) from whom they bought their holiday.
- *Increased termination rights*. Unplanned events can occur before departure. Package travellers will enjoy more flexibility by being able to terminate the contract before departure by paying the organiser a reasonable compensation. Consumers will also be able to cancel the contract, free of charge, before departure in the event of natural disasters, warfare, or similar serious situations at the destination that would affect the holiday.
- *Other essential rights for package travellers* (see the 10 key rights of package travellers above) will be maintained and clarified, including information on details of the package before booking, the organiser's responsibility for the performance of all included services with clear rights for travellers when something goes wrong, including price reduction and compensation for damages, assistance to travellers in difficulty, as well as a money-back guarantee and repatriation in case the organiser of the package goes bankrupt.
- Travellers buying other customised travel arrangements will for the first time be protected if the seller or a service provider (e.g. an airline or a hotel) goes bankrupt, that means money-back guarantee and repatriation.
- *Intermediaries will be made explicitly liable for booking errors* in relation to packages and other customised travel arrangements.

What are the advantages for businesses?

- Modernising the rules and cutting red tape would bring down compliance costs to around € per package sold which amounts to a reduction of around € per package.
- Abolishing specific requirements for brochures would save operators and travel agents €90 million per year.
- Excluding managed business travel from the Directive will lead to savings of up to €76 million per year. This avoids overregulation while ensuring that small and micro-businesses can be protected if they so choose.
- EU-wide rules will make cross-border trade easier, with common rules on information requirements, liability and other obligations towards travellers.
- The mutual recognition of insolvency protection schemes will avoid unnecessary costs for businesses wishing to operate cross-border. Once organisers comply with the insolvency protection requirements of their Member State of establishment, they may sell packages to travellers in other Member States without having to subscribe to the insolvency protection scheme of the traveller's Member State of residence. In addition, host Member States will no longer be able to ask travel agents to take out insolvency protection if the organiser is based in a different Member State. This will help travel operators to extend their offer to other Member States at no extra cost.
- Businesses across the EU selling equivalent travel products will compete on an equal footing.

How do the new rules on package travel relate to passenger rights?

It is clarified in the proposal that package travellers will continue to benefit from the rights under EU passenger rights regulations in relation to air, train, maritime as well as bus and coach transport, in addition to their rights under the revised Package Travel Directive.

In the future package travellers will also be able to invoke rights against a carrier and the organiser.

However, compensation received from one of these parties will have to be taken into account when claiming compensation from the other party.

At the same time, the proposal seeks to ensure consistency between the package travel legislation and rules applying to carriers, for instance, in relation to liability when it is impossible to bring travellers home because of unavoidable and extraordinary circumstances, as was the case at the time of the ash cloud crisis. In this respect, the proposal clarifies that organisers of packages have to pay for the continued accommodation of travellers at the place of destination, but only for a maximum of three nights."

(Source: European Commission, 9 July, 2013)

Court of Justice of the European Union

Ekkehard Aleweld v Condor Flugdienst GmbH (Case C-262/13). Request for a preliminary ruling from the Amtsgericht Rüsselsheim (Germany) lodged on 14 May 2013

Questions referred

Is there also a right under Article 7 of Regulation No 261/2004 to compensation where the departure of the booked flight is delayed by more than three hours, the passenger rebooks on another airline and the delay on arrival compared with the original flight is thereby appreciably reduced, whilst both the original flight and the replacement flight arrive at the original destination far more than three hours late?

If Question 1 is answered in the affirmative: is it decisive in this regard that the period of five hours, specified in Article 6(1)(iii), for application of Article 8(1) of the regulation has or has not expired?

Is it material whether the rebooking was made independently by the passenger or with the defendant's help?

(Source: CJEU)

Court of Justice of the European Union

The German Supreme Court has asked the CJEU for an interpretation of article 12 of Reg. 261/2004. This article provides that the Regulation shall apply without prejudice to a passenger's rights to further compensation but that the compensation granted under this Regulation may be deducted from such further compensation. The BGH has asked the CJEU to clarify whether damages which have been paid to the passenger to compensate him for additional travel expenses caused by the cancellation can be deducted from the compensation pursuant to articles 5 and 7 and if so, what are the preconditions for such deduction.

(Source: IFTTA News, 7 August, 2013)

Department of Transportation

The US Department of Transportation has fined Southwest Airlines \$200,000 for violating the Department's full-fare advertising rules and ordered the carrier to cease and desist from further violations.

DOT's Aviation Enforcement Office found that Southwest advertised one-way, nonstop fares "for \$100 or less" for travel on Feb. 14, 2013, but failed to include a reasonable number of seats available in a significant number of city-pair markets in the fare sale. In addition, on Jan. 30, 2013, Southwest advertised \$66 one-way fares from Dallas Love Field to Branson, Mo., between March 1, 2013, and March 21, 2013. However, there were no seats available at the sale fare on any day during the sale period.

By advertising fares for which a reasonable number of seats were not available and advertising fares that were not available at all, Southwest violated the full fare advertising rule and engaged in prohibited unfair and deceptive practices.

(Source: DOT, July 30, 2013)

Department of Transportation

The US Department of Transportation (DOT) has assessed a civil penalty of \$60,000 against Korean Air for limiting its liability for mishandling checked baggage to an amount less than allowed by an international treaty. After receiving consumer complaints, DOT's Aviation Enforcement Office found that, in some instances, Korean Air limited reimbursement for delayed baggage to between \$50 and \$150, regardless of the amount of the expenses claimed, the length of the delay, or how many passengers were affected. Also, in a few cases, Korean Air refused to pay for the loss of items that were included in the passengers' checked baggage, although nothing in the Montreal Convention, the treaty that sets rules for international travel, allows airlines to disclaim liability for any class or category of items. Korean Air's actions violated the Convention and US law by limiting the airline's liability for lost, delayed, or damaged checked baggage to far less than the approximately \$1,700 per-person amount set by the Convention

(Source: DOT, July 5, 2013)

Department of Transportation

The US Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) has declared Alaska-licensed motorcoach driver Steven Forrest McKinley, II, to be an imminent hazard to public safety and has ordered him not to operate any commercial motor vehicle in interstate commerce. McKinley was served the federal orders June 28, 2013.

On June 14, 2013, McKinley, a commercial driver's license (CDL) holder, was operating a motorcoach transporting 46 passengers and their luggage from Seward, Alaska, to Anchorage. While en route, multiple passengers became concerned for their safety and the safety of others due to McKinley's apparent intoxication. Several passengers called 911 to report McKinley's impaired driving while other passengers asked him to stop the vehicle. When an Alaska State Trooper arrived at the scene, McKinley

was apprehended walking away from the vehicle. His breath alcohol content was determined to be 0.341. McKinley was later charged by the state of Alaska with one count of driving under the influence and 46 counts of reckless endangerment.

(Source: DOT, July 5, 2013)

Supreme Court of the United States

The Supreme Court has agreed to hear a case involving frequent flyer programmes, *Northwest Airlines, Inc. v. Ginsberg*, No. 12-462

The Airline Deregulation Act of 1978 includes a pre-emption provision providing that States "may not enact or enforce a law, regulation or other provision having the force and effect of law related to a price, route, or service of an air carrier." 49 U.S.C. § 41713(b)(1).

The respondent was a member of Northwest Airlines' frequent flyer programme, which by its terms permitted Northwest to remove participants for "abuse" of the programme as determined in Northwest's "sole judgment." The respondent was ejected from the programme for repeatedly filing complaints for upgrades and other benefits.

According to Northwest he had made 24 complaints in the past eight months, including nine incidents of his bag arriving late at the luggage carousel, according to court papers. "You have continually asked for compensation over and above our guidelines. We have awarded you \$1,925 in travel credit vouchers, 78,500 WorldPerks bonus miles, a voucher extension for your son, and \$491 in cash reimbursements,"

After Northwest revoked the respondent's Platinum Elite status membership due to abuse of the programme, the respondent filed suit alleging, inter alia, that Northwest breached both its contractual obligations and an implied covenant of good faith and fair dealing under Minnesota law. Although the district court dismissed the contract claim for failure to state a claim and the implied covenant of good faith and fair dealing claim as pre-empted by the ADA, the Ninth Circuit reversed as to the implied

covenant claim, finding such claims categorically unrelated to a price, route or service notwithstanding decisions in *Morales v. Trans World Airlines*, 504 U.S. 374, 378 (1992), and *American Airlines, Inc. v. Wolens*, 513 U.S. 219 (1995).

The question presented to the Supreme Court is:

Did the Court of Appeals err by holding, in conflict with the decisions of other Circuits, that respondent's implied covenant of good faith and fair dealing claim was not pre-empted under the ADA because such claims are categorically unrelated to a price, route, or service, notwithstanding that respondent's claim arises out of a frequent flyer program (the precise context of *Wolens*) and manifestly enlarged the terms of the parties' voluntary undertakings, which allowed termination in Northwest's sole discretion?

BEUC

BEUC, the European Consumers Association has published a position paper on Regulation 261/2004. These are their comments:

"The new proposal constitutes a number of improvements upon Regulation 261 issued in 2004; we welcome:

- More and better information for passengers on their rights;
- The right to financial compensation for delayed passengers;
- Protection given to passengers who miss their connecting flights due to a previous delay,
- Clarification of the right to re-routing to include options with alternative airlines or other means of transport;
- That the rescheduling of flights is rightly assimilated to (long) delays in some instances;
- The right of passengers to correct spelling mistakes;
- The new provisions strengthening the powers of the enforcement authorities including their obligations to report on their activities and to cooperate with Alternative Dispute Resolution (ADR) bodies;

- The obligation of airlines to put in place in house complaint handling procedures including deadlines to respect.

In contrast, the proposal reduces a few important rights provided now by Regulation 261/04 or by the European Court of Justice:

- The right to compensation for long delays is weakened and deviates from the rulings of the European Court of Justice which granted passengers the right to financial compensation for delays of 3 hours or more;
- The proposal reduces the currently unlimited right to assistance in extraordinary circumstances by limiting it to the provision of accommodation to 3 nights and 100 Euros per night.

Furthermore, a number of issues that currently cause consumer detriment in the air transport sector are not tackled by the proposed review or only insufficiently addressed in the proposal. The future Regulation should include the following elements and rights:

- A full ban of the "no-show" clause;
- The right to re-routing by other means of transport should be granted as soon as possible (the 12 hours timescale should be deleted);
- The right to re-routing should also be granted to passengers who suffer a long delay;
- A presumption that technical problems are not an "extraordinary circumstance", should be introduced;
- Pre-announced strikes and labour disputes should not be considered "extraordinary circumstances";
- Weather conditions which have been foreseen and predicted should not be considered "extraordinary circumstances" as a matter of course;
- The prices of air tickets advertised by airlines should be obliged to include the following minimum services: checking-in, provision of boarding pass and 1 item of checked luggage;
- Aside from one item of hand luggage, passengers should have the right to carry their essential items and their airport retail purchases.

- The right to correct spelling mistakes should be extended to booking mistakes of day and time;
- Passengers should have the right to transfer their tickets to another person in case they are prevented from travelling;
- Airlines should be obliged to regularly report on the quality of their services (e.g. on delays and cancellation rates);
- The right of passengers to file complaints with airlines should not be subject to time limits;
- Airlines should be obliged to adhere to alternative dispute resolution (ADR) or on line dispute resolution (ODR) schemes;
- Airlines should be obliged to have a representative in each airport where they operate;
- Airlines should be easily accessible for consumers by providing passengers with inexpensive telephone contacts and email addresses;
- When baggage is delayed or lost, airlines should be obliged to compensate passengers for each day of delay. Once found the airlines should be obliged to transport it to the consumer;
- The scope of the Regulation should be extended to non-EU carriers arriving in the European Union (and European Economic Area);
- A mandatory guarantee that airlines reimburse and repatriate passengers in instances of insolvency should be introduced.

(Source: BEUC, 16 July, 2013)

IATA

IATA, the International Air Transport Association has made it abundantly clear over the years that it is not favourably disposed to Regulation 261/2004. Now they have come out with a series of core principles which they believe should guide legislators when drafting passenger rights legislation:

"The core principles call on governments to develop consumer protection regulations that:

- Are clear, unambiguous, aligned with international conventions, without extra-territorial implications and comparable with regimes in

place for other modes of transport

- Allow airlines the ability to differentiate themselves through their customer service offerings above a basic common standard
- Ensure passenger access to:
 - Information concerning their rights, fares, including taxes and charges (prior to purchasing a ticket), the actual operator of the flight, and regular situational updates in the case of service disruptions
 - Appropriate assistance for those with reduced mobility
 - Efficient complaint handling procedures that are clearly communicated
- Reflect the principle of proportionality and the impact of extraordinary circumstances when determining compensation
- Do not compromise the industry's top priority of safety, and exonerate airlines from liability for safety-related delays and cancellations
- In the case of denied boarding and cancellations, entitle passengers to re-routing, refunds or compensation where circumstances are within the airlines' control.
- In the case of delays, entitle passengers to re-routing, refunds or care and assistance; and acknowledge that when such delays or disruptions are beyond the control of airlines, market forces should determine the care and assistance available to passengers.
- Ensure that the burden is allocated among the different service providers involved."

(Source: IATA, 3 June, 2013)

Carnival sued in respect of "Poop Cruise"

Twenty passengers have filed suits in Texas for compensation due to the February 11, 2013, engine room fire on the *Carnival Triumph* which caused the cruise ship to drift for five days in the Gulf of Mexico.

The law suit alleges that passengers were exposed to urine and feces, along with odours of raw sewage, which spilled and leaked through the ceilings, wall,

and floors. In addition the passengers allege that they were exposed to extreme heat and cold temperatures and waited in long lines for hours for inadequate and rationed water and food. The passengers allege negligence, breach of maritime contract, negligent misrepresentation, fraud by non-disclosure and fraud.

(Source: www.cruiselawnews.com, 13 August, 2013)

Centers for Disease Control and Prevention

Following an unannounced inspection of Silversea's luxury cruise ship the *Silver Shadow* by CDC inspectors the following finding was made:

"An organised effort was made to physically remove over 15 full trolleys of dry foods, spices, canned foods, cooked foods, milk, raw meats, pasteurized eggs, cheeses of all types, baking goods, raw fruits, raw vegetables, and a variety of both hand held and counter model food equipment, pans, dishware and utensils to over 10 individual cabins shared by two or three galley crew members in order to avoid inspection by VSP staff. All the out of temperature potentially hazardous foods were discarded along with most other foods that were not canned or in original containers. The lead VSP inspector poured concentrated chlorine liquid over all the discarded foods as they were dumped into garbage bags to ensure they would not be used again."

(Source: CDC, 17 June, 2013)

Advertising Standards Authority. Travelworld Vacations

A website ad, on www.olympicholidays.com, for The Sun Club Hotel Bodrum Gumbet, described the hotel as "ideal for ... families" and listed its amenities and facilities, including "24 hour room service", "Laundry service", "Fitness room", "Massage (payable locally)", "Sauna" and "Turkish bath".

A complainant challenged whether:

1. the references to "24 hour room service", "Laundry service", "Fitness room", "Massage", "Sauna" and "Turkish bath" were misleading, because those facilities were not available to hotel guests; and

2. the description of the hotel as "ideal for ... families" was misleading, because the hotel was located on a street of noisy bars and clubs which were open until the early hours of the morning.

On the first complaint Olympic Holidays (Olympic) acknowledged that the claim "24 hour room service" was not accurate. They said the claim should have stated "24 hour reception" and they would amend it accordingly. They said, however, that the laundry service, fitness room, massage, sauna and Turkish bath facilities were available. In support of the claims they provided: a link to the hotel's own website, which referenced the fitness room; a hotel 'Fact Sheet' provided to them by the company which owned the hotel, which listed all the facilities referenced in the ad; and a copy of their contract with the hotel.

On the second complaint Olympic considered such statements were a matter of opinion and that the claim could be interpreted in a number of ways. They understood the complainant had interpreted the reference to "families" to refer to parents with young children but they believed others might interpret it to refer to parents with teenagers or adult children, or to other familial groupings. They said the hotel was located on a road typical of a busy, popular resort, with bars and clubs on the road, but also a number of hotels and restaurants. They said some families would not object to a hotel located on a road with bars and clubs, or would prefer a 'lively' location in the centre of a resort, and would therefore accept noise at night as a necessary trade-off. Notwithstanding that, they considered that a hotel's location was not the only criterion in deciding whether it was suitable, or "ideal", for families. They said the hotel had a range of facilities that would appeal to families, such as a children's pool, a play area, games facilities and an all-inclusive price. They considered the claim "ideal ... for families" was, therefore, appropriate.

The first complaint was upheld. The ASA welcomed Olympic's offer to amend the claim "24 hour room service" to "24 hour reception", although we noted that the ad in fact already referred to "24 hour reception" in addition to the reference to room service.

With regard to the other claims under the first complaint, the ASA understood from the complainant that they had been unable to make use of, or find any information about, a laundry service when they stayed at the hotel, and that the building which housed the Turkish bath, sauna and fitness room was closed to guests and instead was used as accommodation for hotel staff. They sent the ASA photos of the Turkish bath, which was empty of water and had furniture stacked in the adjoining room, and gym equipment which was not in a 'fitness room', but was located alongside chairs and tables in a covered area of the garden. The complainant also referred the ASA to a travel website where a number of reviews of the hotel made references to the lack of the advertised 'spa' facilities. The ASA noted the information provided by Olympic, but considered that it was not adequate evidence to substantiate that the hotel actually provided a laundry service, functioning fitness room, Turkish bath, sauna and massage service as advertised. They concluded the claims had not been substantiated and were misleading.

The second complaint was also upheld. The ASA acknowledged that 'families' would not necessarily consist of parents with young children, and that the level of noise at night would not be the only factor that might influence a family's choice of hotel. However, the ASA considered that in the context of the tourism industry, consumers would generally understand references to accommodation being "ideal for families" or "family friendly" as meaning that the accommodation would be particularly suitable for parents with children of school age. Whilst the ASA agreed that consumers would expect that a hotel described as "ideal for families" would have a range of facilities/activities specifically designed for children, they considered that unless otherwise indicated, consumers would also expect

that there would not be loud noise throughout the night. The ASA concluded that, in order to avoid misleading consumers by omission, the ad should

have made clear that the hotel was located on a busy street of bars and clubs.