

Package Travel and Linked Travel Arrangements: Guidance for Traders

Consultation response requested

## About the Chartered Trading Standards Institute

The Chartered Trading Standards Institute (CTSI) is the professional membership association for trading standards in the UK. Founded in 1881, we represent the interests of trading standards officers and their colleagues working in the UK.

At CTSI and through the trading standards profession we aim to promote good trading practices and to protect consumers. We strive to foster a strong vibrant economy by safeguarding the health, safety and wellbeing of citizens through empowering consumers, encouraging honest business, and targeting rogue practices.

We provide information, guidance and evidence-based policy advice to support local and national stakeholders including central and devolved governments.

Following a Government reorganisation of the consumer landscape, CTSI are responsible for business advice and education in the area of trading standards and consumer protection legislation. To this end, we have developed the Business Companion website to deliver clear guidance to businesses on how to meet their legal and regulatory obligations.

CTSI are also responsible for the Consumer Codes Approval Scheme which facilitates high principles of assisted self-regulation through strict codes of trading practice. This ensures consumers can have confidence when they buy from members of an approved scheme and also raises the standards of trading of all businesses that operate under the relevant sector's approved code.

CTSI is also a key member of the Consumer Protection Partnership, set up by central government to bring about better coordination, intelligence sharing and identification of future consumer issues within the consumer protection arena.

We run training and development events for both the trading standards profession and a growing number of external organisations. We also provide accredited courses on regulations and enforcement.

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**A key concern for CTSI is diminishing resources. UK local authority trading standards services enforce over 250 pieces of legislation in a wide variety of areas vital to UK consumers, businesses and the economy. Since 2009 trading standards services have suffered an average reduction of 46% in their budgets and staff numbers have fallen by 53% in that same period.**

## Package Travel and Linked Travel Arrangements

When initially deciding on what areas to cover for our business guidance in 2019 it was clear that package travel was a suitable area due to the recent legislation changes. There is a select market of independent agents who are unsure of their obligations with the legislation, so we have written the guidance with them in mind and as a general overview for the larger companies. We aim to follow up the final guide with a comprehensive comms package including an animation and infographics.

We would now like your views on our guidance booklet and welcome you to pass comment on the general design and flow.

The fact that this is an introductory guide to the travel sector, rather than a comprehensive guide should be taken into consideration and while we've tried to pull out the key points we aren't able to cover everything because of space limitations

At this stage we would only be able to consider adding new content that is vital to the complaints landscape that we may have missed, and the fact that we would have to be mindful that it fits within the scope of the project

The consultation will end at close of business on **Friday 3<sup>rd</sup> January 2020**. Please provide all responses to [adamm@tsi.org.uk](mailto:adamm@tsi.org.uk).

We thank you for taking the time to read our Package Travel and Linked Travel Arrangements guidance booklet and providing your comments.

Best regards

 A handwritten signature in black ink that reads 'Sue Steward'.

**Sue Steward**  
**Head of Client and Commissioning**



**Business in Focus**



# Package travel and linked travel

## Guidance for traders

Make sure your business complies with the Package  
Travel and Linked Travel Arrangements Regulations 2018



# Foreword

## Bruce Treloar, CTSI Lead Officer for Holiday and Travel Law

The introduction of the Package Travel and Linked Travel Arrangements Regulations 2018 (2018 PTR's) has been a major change for businesses as package holidays and linked travel arrangements are often complex combinations of travel services which include transport and accommodation but may also include other services, like car hire and significant, 'other tourist services', like excursions. Different service providers, e.g. airlines and hotels are often involved and a problem with the delivery of one service may affect the delivery of the others.

One of the major problems is businesses having to accept that separate purchases of travel services will come under the new rules (e.g. a traveller visiting a high street travel agent or online travel agent, paying for a flight and without leaving the travel agent or moving to another website, decide to purchase a hotel to 'link' with the flight)

To understand the extent of the problem I researched the level of complaints regarding holidays and travel (obtaining figures from the Trading Standards 1st tier advice service, Citizens Advice)

So, I compared complaints from 1st August 2017 to 1st August 2018 (up to the start of the new PTR's) and there were **10,006 complaints** regarding holidays and travel. From 1st August 2018 to 1st August 2019 (12 months from implementation of the new rules) there were **8,137 complaints**, a reduction of **1,869!**

The majority of the complaints concerned problems from both business and travellers with the interpretation of the new PTR's (specifically, Package Holidays abroad, all-inclusive packages, cruises and linked travel arrangements). There was some initial misunderstanding between the 2018 PTR's and the Consumer Protection from Unfair Trading Regulation's as regards misleading pre-contract information provision, Linked Travel Arrangement descriptions and online transactions.

The purpose of this guidance is to provide key points and guidance for Business in understanding the requirements of the 2018 PTR's providing text but also case studies explaining real life examples of where the new rules apply.

The new rules highlight offences which are again explained and by means of introduction these could be: failure to provide pre-contractual information and the information required when providing the confirmation invoice; failure to provide insolvency protection for packages or linked travel arrangements; providing false information to release monies held on trust for insolvency cover; and, in regard to Linked Travel Arrangements, failing to put in place insolvency cover or provide pre-contractual information.

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This booklet was produced on contract by Fourth Estate Creative Ltd.  
[www.fourthestatecreative.com](http://www.fourthestatecreative.com)

Published by:  
Chartered Trading Standards Institute, 1  
Sylvan Way,  
Southfields Business Park,  
Basilidon SS15 6TH  
01268 582 200  
[www.tradingstandards.uk](http://www.tradingstandards.uk)

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Definitions

‘Package’

i. A package is created when travel services are combined by one trader and sold under a single contract.

These types of packages are traditional packages sold by high street travel agents BUT unlike the previous Regulations, there is no mention that the packages must be ‘pre-arranged’ and they will include ‘tailor-made holidays’

Or where those services are:

ii. sold in a single booking process

A package is created when a traveller has selected from the same point of sale two or more travel services and then agrees to pay for them within the same booking process (This is a Shopping Basket model where the Point of Sale could be high street travel agents, websites or telephone sales

iii. sold at an inclusive / total price

iv. sold as a ‘package’ (or under a similar term)

v. combined after the sale of the package allowing subsequent choice (gift-box style holidays)

This type of package is a difficult concept. In our view, it relates to arrangements where a trader sells a package that allows a traveller to pick and choose different travel services after they have concluded the contract.

vi) sold through a linked online booking process

This includes situations where a traveller purchases different travel services for the same trip through a linked online booking process where the traveller’s name, payment details and email address are sent from the first trader they purchase from, to a targeted second trader and a contract is concluded with the second trader no longer than 24 hours after the first service was purchased

This type of package is created when a traveller goes to e.g. an airline website to buy a flight and on this website is a link to an accommodation provider where the travellers name, payment details and email address appear and as long as the traveller purchases within a 24 hour period it will become a package and the airline will become the Organiser

‘Travel service’

In order to create a package, you need to sell two or more different travel services, from the four below:

i. Carriage of passengers. This includes flights, trains and coaches.

ii. Accommodation. It is important to note that accommodation that is intrinsically part of carriage of passengers is not in scope. For instance, a ticket on a sleeper train where the purpose is to get from A to B and staying on board is a necessary part of that journey, would not constitute a package.

iii. Motor Vehicle Hire. This includes car and motorcycle hire.

iv. Any other tourist services. These are services that are not intrinsically part of the carriage of passengers, accommodation or motor vehicle hire but make up a significant part of the package. For example, A traveller books a golf break with a hotel or travel organiser that includes a pre-booking for round(s) of golf, as well as the accommodation. This could be a package. However, a hotel booking for accommodation at a hotel that happens to have a golf course as a facility is not in itself a package. The golf course is simply a facility.

‘Linked travel arrangements’

There are two different types of Linked Travel Arrangements envisaged by the 2018 PTR Regulations;

i. Separate purchases made during a single visit to a shop (e.g. travel agent where the traveller selects and pays for a hotel and then, without leaving the Agent, he pays separately for a flight) or website (e.g. customer goes onto a website, selects and pays for a flight, and then while he’s still on the website, he then goes and selects and pays for a hotel)

ii. Then on a website, after the traveller has purchased one element, they are ‘targeted’ with a cross-sell to another trader, and the traveller buys from that other trader within 24 hours (e.g. an airline sells a customer a flight. In the booking confirmation email, the airline invites them to book a hotel room with Booking.com to go with their flight. Customer clicks on the link and books a hotel within 24 hours of booking the flight).

‘The Consumer Rights Act 2015’

This piece of law requires that services provided by traders to consumers should be performed in accordance with the contract, with reasonable care and skill, at a reasonable price. As a general rule, if something goes wrong with the supply of holidays and travel, consumers can claim their direct losses, but they cannot claim compensation for distress and inconvenience. However, the law makes an exception for some types of contract, including contracts for package travel. Therefore, as the purpose of a holiday is usually to provide enjoyment and relaxation, a consumer may be able to claim compensation for inconvenience and distress, on top of a refund and any other losses, if things go wrong’

‘The Consumer Protection from Unfair Trading Regulations 2008 (CPR’s)’

These Regulations prohibit 31 specific practices that are always considered to be unfair and create further offences for aggressive practices. They prohibit ‘misleading actions’ and ‘misleading omissions’ that cause, or are likely to cause, the average consumer to take a ‘transactional decision’ they would not have taken otherwise. They apply to commercial practices relating to package holidays and travel services (including websites) before, during and after a contract is made.

Effectively the CPR’s prohibit trading practices that are unfair to consumers. There are four different types of practices to consider:

- practices prohibited in all circumstances
- misleading actions and omissions
- aggressive practices
- general duty not to trade unfairly

For the last three practice types above it is necessary to show that the action of the trader has an effect (or is likely to have an effect) on the actions of the consumer in making a booking for a holiday. The test looks at the effect (or likely effect) on the average consumer, which mean there is no need for evidence about how any particular individual was affected. As stated above, there are 31 of these ‘banned’ practices in the Regulations and the important one is:





Misleading availability

- Bait advertising (or ‘bait and switch’). This is where a trader misleads a consumer into believing they can buy a package holiday or travel service at a low price when the trader is aware, they do not have reasonable stock available or are not able to supply at that price; this is also where the trader attempts to ‘up-sell’ to a higher priced product
- falsely stating that a product is only available for a very limited time in order to make the consumer make an immediate decision

An example of a breach of the law would be where an advertised sale of package holidays stated a finishing date for the offer, but the sale was continued after the advertised finishing date as few sales had been made.

An example of other specific ‘Banned Practices’ are added after ‘Misleading Omissions’ below.

Misleading actions & omissions

The CPR’s prohibit ‘misleading actions’ and ‘misleading omissions’ that cause, or are likely to cause, the average consumer to take a different transactional decision. This does not only relate to pre-shopping but includes after-sales.

Firstly ‘Misleading Actions’ under the CPR’s. This is where a trader provides false information about important matters, such as the main characteristics of the product (even if the information is factually correct), or presents the product in such a way as to be likely to deceive the consumer as to these matters  
An example of a breach of the law would be where flight prices are advertised but they do not include Government taxes.

Then ‘Misleading Omissions’. The CPR’s prohibit giving insufficient information about a holiday or travel service. It is a breach of the CPR’s to fail to give consumers the information they need to make an informed choice in relation to a holiday or travel service if this would cause the average consumer to take a different decision

An example of a breach of the law is where a hotel advertises that they provide air conditioning in every bedroom but there is a delay in installing the air conditioning and it is not available throughout the holiday season.

Some other Banned Practices are listed below:

- i. Claiming to be a signatory to a code of conduct when the trader is not e.g. claiming compliance with the ABTA Code of Conduct without being Members.
- ii. Displaying a trust mark, quality mark or equivalent without having obtained the necessary authorisation e.g. Using the ABTA logo

“It is a breach of the CPR’s to fail to give consumers the information they need to make an informed choice”

- iii. Claiming that a code of conduct as an endorsement from a public or other body which it does not have.
- iv. Claiming that a trader (including his commercial practices) or a product has been approved, endorsed or authorised by a public or private body when the trader, the commercial practices or the product have not or making such a claim without complying with the terms of the approval, endorsement or authorisation e.g. again reference to ABTA
- v. Making an invitation to purchase products at a specified price without disclosing the existence of any reasonable grounds the trader may have for believing that he will not be able to offer for supply, or to

**It is a breach of the CPR’s to:**

- » omit material information
- » hide material information
- » provide material information in a manner that is unclear, unintelligible, ambiguous or untimely.

procure another trader to supply, those products or equivalent products at that price for a period that is, and in quantities that are, reasonable having regard to the product, the scale of advertising of the product and the price offered (bait advertising) e.g. this is described as ‘bait advertising’ with an example above



Key points and guidance for Business in understanding the requirements of The Package Travel and Linked Travel Arrangements Regulations 2018 (PTR's 2018) as they apply to holidays and travel arrangements sold after 1 July 2018.

Many of the PTR's 2018 requirements will be familiar to those used to organising package holidays.

However, the definitions and scope of the requirements mean that it is likely that many more travel companies will have to ensure that their business systems and practices take account of the PTR's 2018. The three key areas to consider are:



Businesses will need to put in place processes and procedures when making sales in Agencies, on the telephone or on their website.



Businesses will need to provide security for the money they take from consumers by holding an Air Travel Organisers Licence or by providing a bond or insurance policy or by holding the money in a trust account.



Businesses will need to review contracts both with their customers and their suppliers.



# CTSI's six key travel best practice areas



## Do you organise packages?

As the collapse of Thomas Cook illustrated, flight-inclusive package holidays are required to have insolvency protection to protect the consumers money.

The law states that a consumer's holiday must be protected if it is a package holiday. ATOL (which stands for Air Travel Organiser's Licence) is a UK financial protection scheme and it protects most air package holidays sold by travel businesses that are based in the UK. The scheme also applies to some flight bookings, usually those where you book flights (including UK domestic flights) but do not receive your tickets immediately.

ATOL was first introduced in 1973, as the popularity of overseas holidays grew. After a number of high-profile travel business failures left people stranded overseas the UK Government realised consumers required protection when their travel providers fell into difficulties. ATOL currently protects around 20 million holidaymakers and travellers each year.



Thomas Cook, the world's oldest Tour Operator, ceased trading on September 23, 2019 after 178 years of holiday making

It may help to highlight the responsibility of Organisers and Agents with the example of the collapse of Thomas Cook:

### i) Flight-based ATOL package holidays

If there are travellers that have booked an ATOL protected package with Thomas Cook Limited, they should refer to the CAA website (Civil Aviation Authority) for further advice.

### ii) ATOL Protected flight only

If there are travellers that have booked on ATOL protected flights with Thomas Cook Tour Operations Limited, you should refer to the CAA website for further advice.

### iii) High Street/Retail Sales

Where you are the contracted Organiser/Principal for bookings taken by Thomas Cook Retail Limited, it is your responsibility to continue to provide the holiday booked.

### iv) Non-flight packages

Where you have booked non-flight packages with Thomas Cook Tour Operations Limited, these sales were protected under the ABTA scheme of financial protection. Travellers will need to submit a claim for a refund to ABTA by visiting [www.abta.com/thomascook](http://www.abta.com/thomascook).



v) Travellers who are on a non-flight package holiday should continue their holiday as normal, if there are any problems they should contact ABTA: [abta.com/thomascook](http://abta.com/thomascook).

### vi) Single Element Sales (e.g. Accommodation only)

Where single element sales have been booked, such as accommodation only, with Thomas Cook Tour Operations Limited, these sales were protected under the ABTA scheme of financial protection. Travellers will need to submit a claim for a refund to ABTA by visiting [www.abta.com/thomascook](http://www.abta.com/thomascook). Travellers who are on holiday and utilising an accommodation only booking will need wherever possible to settle their accommodation bill if required to do so, they should retain all receipts and submit a claim to ABTA on their return.

### vii) Flight Only with Thomas Cook Airlines Ltd (Sale of flight only or linked travel arrangements)

Thomas Cook Airlines Ltd was not a Member of ABTA and did not hold an ATOL licence with the Civil Aviation Authority.

If travellers' flights were booked through Thomas Cook Airlines, there is no financial protection in place for those sales, if those flights were used to form part of a package for travellers, then the trader may be responsible to make alternative arrangements for them.

Agents are advised that where they took travellers payments by debit or credit card there is a risk of chargeback if travellers make a claim with their credit card issuer or bank. In these circumstances, agents are advised that if they had supplier failure insurance

(SAFI) in place they should contact their insurer.

So, if a travel business with an ATOL ceases trading, the ATOL scheme protects consumers who had booked holidays with the company. It will support consumers currently abroad and provide financial reimbursement for the cost of replacing parts of an ATOL protected package.

The scheme is designed to reassure consumers that their money is safe and will provide assistance in the event of a travel business failure. For more information, use this link to the Civil Aviation website <https://www.caa.co.uk/atol-protection/>.

There are three insolvency protection options which 2018 PTR's permit organisers to use for **non-Flight Package holidays**:

**Bonding:** To use the bonding option a trader must be a member of an approved body (approved by Department for Business, Energy and Industrial Strategy) which oversees the bonding process to ensure that the bond is at an adequate level to meet insolvency requirements. The bonds must not exceed a period of 18 months, and must be a sum that: covers the maximum amount of payments the organiser expects to hold at one time for travel packages still to be performed; or is not less than 25% of all payments the organiser expects for travel packages in the 12 month period from the start of the bond, whichever sum is the smaller. Alternatively, if the approved





body has a reserve fund or insurance to cover any shortfall in bond cover the sum must cover: no less than 10% of such payments; or the maximum amount of payments the organiser expects to hold at one time for travel packages still to be performed, whichever is the smaller. In the case of packages which might involve repatriation costs, the bond must also incorporate such additional sum as the organiser may reasonably be expected to cover and, if necessary, accommodation for the traveller prior to repatriation. List of current approved bodies: ABTA – The Travel

Association; Association of Bonded Travel Organisers Trust (ABTOT); Bonded Coach Holidays (BCH)

**Insurance:** The organiser can take out one or more insurance policies which recognises the travellers as the insured persons and therefore pays direct to the travellers in the event of insolvency. Organisers should ensure that any insurance policy that they secure is not voided due to negligence or a breach of condition on their part. For instance, we are aware that ABTA – The Travel Association makes it a condition for

any underwriters on their approved list not to reject any claim made by customers or withhold payment under the Policy to any customers (who can prove a loss) due to any breach of the terms, conditions or covenants of the Policy by the relevant Package Organiser or facilitator of a Linked Travel Arrangement. We consider this to be good practice.

**Trust Account:** This option requires all money paid by the traveller to be held by an independent trustee until the contract has been performed.

The independent trustee can pass the money to the organiser only when they provide evidence that the contract has been fulfilled or if evidence is provided that the organiser has repaid a portion of the money to the traveller or the money has been forfeited on cancellation by the traveller. The costs of administering the Trust must be paid for by the organiser. If the organiser is providing a package that includes the carriage of passengers then they must have insurance in place to cover repatriation, and if necessary, accommodation for the traveller prior to repatriation.

**The PTR's 2018 do not apply to the following:**

- Packages covering a period of less than 24 hours unless overnight accommodation is included
- Packages offered occasionally and on a not for profit basis and only for a limited group of travellers
- Packages purchased based on a general agreement between a travel company and another person acting for a trade business craft or profession for the purpose of booking travel arrangements in connection with that trade, business, craft or profession.

Bearing in mind the definition of 'package' above, these are some examples of common situations and our advice:

**i.** Would a 'transfer' from the arrival airport to the accommodation (e.g. the carriage of travellers), lead to the creation of a package? No, minor transport services such as a transfer between a hotel and the airport will not be the 'carriage of passengers' and this will be the case for most transfers.

**ii.** Is it always the case that combining a tourist service with another relevant service makes a package? An example of this would be a hotel (accommodation) providing access to on-site facilities such as a swimming pool, sauna, or gym included for hotel guests. This will not be a package, but businesses will need to look at how significant it is to the package as a whole. It can lead to the creation of a package, when combined with another travel service, e.g. if it: accounts for a significant proportion (25% or more) of the value of the combination; or is advertised as, or otherwise represents, an essential feature of the combination, e.g. a stay at a hotel and a guarantee of a round of golf at a famous local golf course.

So, examples of tourist services that might make a package if combined with carriage of passengers, accommodation or car hire are: admission to concerts,

**“Organisers should ensure that any insurance policy is not voided due to negligence on their part”**

sport events, excursions or event parks, guided tours, ski passes and rental of sports equipment such as skiing equipment, and spa treatments.

**iii. 'Package Plus'**

This is the situation where a travel agent sells a tour operator's package to a customer. They also sell an additional service from a different supplier e.g. an airport hotel the night before the package starts. Has a new package been created, comprising the package and the extra service, for which you are responsible?

In our opinion the answer is no. A package isn't one of the 'travel services' defined in the PTR's (carriage of passengers, accommodation, car hire and other tourist services) so it can't lead to the creation of a new package if combined with another service.





This case study concerns the growing trend of package holidays being sold on major social network sites by 'homeworkers' who do not always understand the significance of the sales of package holidays.

One travel post by a seller we'll call 'X' on a social networking site ends, "Flights sold separately but showing from £37 with Whizz Air from Doncaster Airport" Is the offer for the seller to make the booking or for the consumer? It really isn't clear, and it should be clearer at the beginning that the flight is extra. If X makes the booking, was it at the same time as the hotel booking? If so, then an LTA (if paid separately) or package (if paid as a total fee) would be created.

The post could be misleading and we would have to consider whether the average consumer would be misled (thinking it an LTA or package), potentially leading to a CPR offence. Another major issue is giving an approximate price of flights as they would be subject to change and this could be construed as misleading if the price increased. Travel agents should have a system to check that the information is as up to date as possible, which would be their due diligence defence!

Let's also not forget the whole issue of X suggesting the flight and where to purchase. If that is what is being considered then this could be an LTA where there is targeted cross selling to a third party, once the purchase of the accommodation is made!

### Organisers/Principals and Travel Agents

The 2018 PTR's explicitly places liability for the performance of the travel services included in the package on the Organiser/Principal irrespective of whether the travel services are performed by third parties.

In some cases, the person with whom the consumer immediately deals in purchasing a package will be the organiser/principal. In other cases, the consumer will be dealing with a retailer (Travel Agent) selling on behalf of an organiser/principal. When considering whether a trader is an organiser/principal, it should make no difference whether that trader is acting on the supply side or presents himself as a Travel Agent acting for the consumer. Any trader who ultimately combines a package will be the organiser/principal for the purposes of the 2018 PTR's.

There is always a need as a principal/organiser to ensure you provide accurate information to consumers. Organisers/Principals could offer package holidays, linked travel arrangements, accommodation-only or flight-only facilities to the consumer. The requirement for accurate information is to enable consumers to make an

informed choice. The collapse of Superbreak highlighted problems and the need for this accuracy. The Company advertised ABTA bonding and at the base of a page concerning the sale of UK hotels-only, it advertised ABTA protection. This clearly misled consumers as ABTA do not provide protection for UK hotel bookings.

It is important with package holidays and travel services to understand what the responsibilities of the Organiser/Principal and Agent are in any transaction with the consumer. In general terms, the organiser/principal is the party that is contractually bound to the consumer to provide the travel services. You will be the organiser/principal if you place yourself in contract with the customer either directly or through someone you have appointed or allowed to act as your agent.

Where an agent has been appointed, it can contract on behalf of that organiser/principal and their acts are treated as those of the organiser/principal. In addition, monies paid to an agent on behalf of the organiser/principal are deemed to be received by them.





## Online accommodation marketplace

### The second case study concerns a well-known accommodation-only provider.

There is currently an investigation by one of our Authorities regarding the issue that a prominent accommodation marketplace seems to be selling package holidays and not providing the level of financial protection needed. Normally there is no problem with obtaining a holiday property, but there are links suggesting that they are growing into package territory!

Typically, although not definitively, an Organiser/Principal will issue their own documentation to the consumer, have terms and conditions (which may include cancellation terms and provisions), set the price of the supply and be responsible for the actual supply of the services.

The PTR's 2018 have added new definitions for Principal/Organiser. e.g. Where a consumer purchases a flight on the airline's website (from the airline-the Organiser/Principal) and a link on the flight website takes the consumer to an accommodation website (e.g. Booking.com) where a booking is made within a 24-hour period. This, 'Linked website transaction' (not Linked Travel Arrangement), occurs when the payment details, name and email address of the consumer is passed from the initial Principal/Organiser to another trader in a targeted manner and would now be termed a package.

When considering whether a trader is an organiser/principal, it should make no difference whether that trader is acting on the supply side or presents himself as an agent

acting for the traveller. Any trader who ultimately combines a package will be the organiser/principal for the purposes of the 2018 PTR s.

Consumers need to inform the Organiser/Principal without undue delay, considering the circumstances of the case, of any lack of conformity they perceive during the performance of a travel service included in the package travel contract. Failure to do so may be considered when determining the appropriate price reduction or compensation for damages where such notice would have avoided or reduced the damage.

Consumers will not be entitled to compensation for damages if the Organiser/Principal can prove that lack of conformity is:

- attributable to the consumer;
- attributable to unforeseeable or unavoidable actions of a third party not connected to any of the travel services included in the package; or
- due to unavoidable and extraordinary circumstances.

If a consumer is in difficulty during the package holiday, the Organiser/Principal is obliged to give appropriate assistance without delay. Such assistance should consist mainly of providing, where appropriate, information on aspects such as health services, local authorities and consular assistance, as well as practical help, for instance about distance communications

and finding alternative travel arrangements. They can charge a reasonable fee for such assistance if the difficulty is caused intentionally by the consumer or through the consumer's negligence. That fee shall not in any event exceed the actual costs incurred by the organiser/principal.

It is possible to act as the retailer (travel agent) for other organisers/principles when selling package holidays. If you, as a retailer, sell the packages as the properly disclosed travel agent of the organiser/principal, you will not generally be responsible for the travel services to be provided under the package contract or for the financial protection. However, you will be required to provide specific information about the package, and you may have additional responsibilities (See Key Point 3)

When a consumer buys a holiday or trip, they will have to be given specific information where it is relevant to their holiday. The obligation to provide this information rests with the organiser/principal and, where the package is being sold by a retailer (travel agent), also the retailer, and they must agree how this information is to be provided.





## Building Works

**“The question is not whether the omitted information would assist, or be relevant, but whether it’s provision is necessary to enable an informed transactional decision”**

### The next case-study concerns the issue of, ‘Building Works in Resort’ and when to notify the consumer.

We have recently been in contact with the Advertising Standards Authority (ASA) regarding their Code of Advertising Practice which is based upon the Consumer Protection from Unfair Trading Regulations which we enforce!

We talked to their executive about just what the ASA mean when they state that: “when advertising hotels abroad the Organiser/Principal should always put on the website (if this is how the package is sold) that there may be building works at the hotel”. They quote their Code of Advertising Practice. The three important points I made were:

- i) Information on building work, if relevant to the traveller, can be provided during the booking process. The ABTA Code states that this should be provided before the holiday is booked. Trading Standards will always refer to the PTR’s 2018 which clearly want information about building works just before the booking is made, when more information would be available to make a much more reliable decision.
- ii) This view, that not everything has to be provided at the start of the booking process, is backed up by the case of *OFT v Purely Creative* (2011). The judge stated that: “In my judgement the key to understanding this paragraph is the concept of, ‘need’. The question is not whether the omitted information would assist, or be relevant, but whether it’s provision is necessary to enable the average consumer to take an informed transactional decision”

(Briggs)). Some information will be relevant, or helpful, but it isn’t needed to make that initial decision to select the holiday. It will be much more important to the consumer whether the price is affordable, or the dates match with when they want to go!

- iii) We then said the issue about building work is: ‘what can you say on the front page that will help the traveller?’ ‘There is building work at this hotel’ would not be of specific enough or be of benefit to the traveller. The traveller will need to know the impact of the work, which could range from a bit of visual untidiness through to a noisy disruption of a holiday. Also, building works change all the time, so it would be impossible to accurately describe it? Also, it affects travellers in different ways. They might be put in a room away from it. They might spend very little time at the hotel, and not be bothered at all. Also, they might book for a future date when the work will have stopped! Trading Standards and ABTA consider it’s misleading to put a general statement on building work at the start. That is why it works so much better coming up later in the process through an errata, if it affects the client’s dates of travel.

The pre-booking and confirmation of booking are covered in Key Point 3 but there should, critically, be information on the characteristics of the actual services being sold including information about whether the trip or holiday is generally suitable for persons with reduced

mobility and, if the customer requests it, precise information on the suitability of the trip taking into account the traveller’s need. Organisers/principals and Agents should ensure they are able to provide this information by making the necessary enquiries of the suppliers of the services.

And the responsibility of Travel Agents/Retailers?

Agency is a commercial relationship where one party expressly or implicitly agrees for another to act on their behalf. An agent can make binding contracts between the organiser/principal and a consumer.

An agent isn’t a party to those contracts.

The key features of an agent include:

- to carry out tasks for the organiser/principal with reasonable skill and care;
- a requirement to pay over to the organiser/principal all monies received on its behalf;
- payment by way of agreed commission rather than by way of private profit;
- marketing and promoting the organiser/principal’s products;
- in some cases, collect payment and apply and collect cancellation fees on behalf of the organiser/principal. If payment is made directly by the consumer to the organiser/principal this won’t, itself, affect the status as an agent;
- if the consumer chooses, they may treat the agent as a point of contact in respect of messages, complaints or claims relating to packages they have sold on behalf of organisers.



Do you sell LTAs?

Do you sell Linked Travel Arrangements (LTAs)?

We start here with a reminder of the definition;  
There are two different types of LTA envisaged by the 2018 Regulations;

- i. Separate purchases made during a single visit to a shop (e.g. travel agent where the traveller selects and pays for a hotel and then, without leaving the Agent, he pays separately for a flight) or website (e.g. customer goes onto a website, selects and pays for a flight, and then while he’s still on the website, he then goes and selects and pays for a hotel)
- ii. Then on a website, after the traveller has purchased one element, they are ‘targeted’ with a cross-sell to another trader, and the traveller buys from that other trader within 24 hours (e.g. an airline sells a customer a flight. In the booking confirmation email, the airline invites them to book a hotel room with Booking.com to go with their flight. Customer clicks on the link and books a hotel within 24 hours of booking the flight).

The PTR’s 2018 exempt the following LTAs;

- LTAs covering a period of less than 24 hours unless overnight accommodation is included
- LTA’s offered occasionally and on a not for profit basis and only for a limited group of consumers
- LTA’s purchased based on a general agreement between a travel company and another person acting for a trade, business, craft or profession for the purpose of booking travel arrangements in connection with that trade, business, craft or profession.

There is one important consideration and that would be to ensure you are not selling a package rather than a Linked Travel Arrangement. You will be if you fall within any of the package definitions, for example;

1. All the services have been selected before the customer agrees to pay for them, or
2. you offer, sell or charge an inclusive or total price, or
3. you advertise or sell the travel services as a package or similar term.

The fact that a customer pays separately for the travel services does not mean that it is a Linked Travel Arrangement. They must select a service and book it before moving on to select and book the second and further services for the resulting trip to be a Linked Travel Arrangement rather than a package.



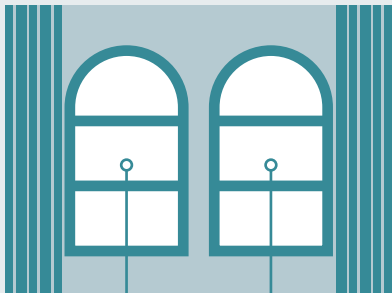
### Case Study: 'Sea View'

An online bed bank sold a hotel with this description: “the hotel has a wonderful sea view”. The picture below shows the picture which accompanied the online description.




The bed bank took payment for the hotel and in a separate transaction, the consumer paid for a flight to the resort. This was, therefore, an LTA. However, when the consumers arrived, they found the description of the room to be totally misleading. The room had a ‘sea view’ painted on the wall and led to an investigation.

### Actual View



Wall painted white



### Case Study: When to book an LTA

This next example shows the problems for consumers, who may think this is a very worthwhile deal. At no time, however, was the financial protection discussed, which, as we have explained, is totally different.

What you need to know if you’re facilitating LTAs. Facilitating means making the arrangements for the LTA, e.g. as a Travel Agent selling the consumer a flight and without the consumer leaving the premises, selling the consumer accommodation but in a separate transaction.

Customer information is extremely important. You must tell the consumer, before they complete the booking, that they’re buying an LTA and not a package. There is standard wording for you to use. If you fail to do this, you pick up the responsibilities for the holiday as if you were a package organiser.

Also, in some cases, you’ll need to ensure there’s some financial protection in place, by providing a bond or insurance policy or by holding the money in a trust account. An ATOL may also be required in respect of the flight element of an LTA. The financial protection required for an LTA is limited to the protection of monies held by the trader that facilitates the LTA, not monies passed on to the suppliers.

Original advert text

## WHEN TO BOOK AN LTA

When client comes into office or calls or emails we can offer to book an LTA where it is beneficial to the client, you would book flight and accommodation/transfer separately.

Client would pay for each item separately.

We would also offer a package to ensure the widest choice to client.

e.g.	
Flight	£200 gross (separate receipt)
Accommodation	£150 gross
Transfer	£40 gross

You would issue 3 separate receipts (and keep in one file and put through 3 separate payments) all under one doc.

If a client comes in after selling a package offered on Facebook/Window/Newspaper etc. The client can either:

- A. Book the Package at Package Price; or
- B. We can offer a Linked Travel Arrangement at a reduced price

PACKAGE	OR	LINKED TRAVEL ARRANGEMENT	
£900pp		Flight	2x £400 = £800
x2 = £1800		Accommodation	2x £350 = £700
		Transfer	2x £80 = £160
		CLIENT SAVINGS	£140

We can never advertise an LTA or show by email or advertise a total price

The trader may not take on the liability for the travel services, in contrast to the situation if you sold a package. The responsibility for the provision of the services under an LTA lies with the service provider under normal contractual terms. So, if you act as agent for all the providers, you don’t have responsibility for the services.

As stated above, the 2018 PTR’s require insolvency protection for all LTAs (including where a flight is involved) to be covered using the options that are available for non-flight packages. It is consistent with the Regulations that a trader may

utilise an Insurance compliance solution in respect of, for example, their Package Holiday sales and separately utilise, for example, a Bonding solution in relation to their Linked Travel Arrangement sales. If a travel service that should receive insolvency protection under an LTA has already been covered by ATOL protection (e.g. ATOL seat only), that travel service does not also have to be covered using one of the insolvency options specified in the 2018 PTR’s. There is one final example of a deliberately inaccurate sale of an LTA.



# INFORMATION requirements under the Package Travel and Linked Travel Arrangements Regulations 2018

This element of, ‘Best Practice’ concerns the statutory information that must be provided in a clear, comprehensible and prominent manner to consumers before making a package holiday booking. I have given a brief explanation below and will then provide the exact requirements from the Regulations. So, let’s start with the relevant Schedules in the PTR’s 2018:

**Schedule 1 information requirements in the Regulations would be covered in any brochure** description and in our view the information would be discussed during the sales process, complementing the brochure description.

**Schedule 2** information, will not be a problem as it relates to website sales where links can be used to provide consumers with their ‘key rights’ (this is contained in Part 1 of Schedule 2)

**Schedule 3**, Part 2, again talks of Key Rights information. This is where the problems occur as they relate to **Travel Agents (shop sales) and Telephone sales**, where the consumers ‘Key Rights’ must be explained BEFORE the booking is made. Part 1 relates to the protection and Part 3, the copy of the actual Regulations

**Schedule 5** highlights the information to be provided in the Package Travel Contract after the booking has been made (the Confirmation Invoice)

What now follows, is the practical situation of a website sale, high street agent (shop) sale and a telephone sale.

**\* Website sales.** No problems, the website can be designed to provide all the Schedule 1 information and provide links to the Standard Information, ‘Key Facts’ (in Schedule 3), with the link to the actual Regulations. (<http://www.legislation.gov.uk/ukdsi/2018/9780111168479/contents>)

**\* High Street Agent (shop) Sales.** The ‘Key Rights’ could be laminated and provided for the consumer before making the sale or the basic information could be read out to the consumer. Looking at the situation practically, the simplest solution would be for the consumer to be directed to the information in the brochure or website, especially the protection details in the new PTR’s 2018. As explained above, the information in Schedule 1 would be discussed in the process of the sale.



**\* Telephone Sales.** The sales discussion should be able to highlight the basic Schedule 1 information, which could be emailed to the consumer during the sales process or reference made to the Organisers/ Principals brochure or website. Then we come to the ‘Key Facts’. Access to their website and direction as to where the legal information can be found is one possibility, or an email highlighting the information, while the consumer is on the phone and told to refer to, is another.

**\*The Confirmation invoice** is also required to contain specific information relating to the package travel contract. A way of ensuring the relevant information is provided could be to ensure that the basic details should be accompanied by the Organisers/Principals ‘Booking Conditions’, which seems to meet the requirements. So now on to the exact information required and stated in the 2018 PTR’s:

**Schedule 1 (see above):** As stated above, this is the information to be provided to the consumer, where applicable, before the conclusion of the package travel contract. We suggest you initially provide a comment: “The Information requirements in the Regulations should be covered in any brochure description and the information will be discussed during the sales process, complementing the brochure description”

One of the most important issues is the insolvency protection information. The PTR’s 2018 also require that, before the consumer enters into a contract to buy a package holiday, the consumer must be given standard information about the protection provided by the Regulations.

If the information in Schedule 1 is not applicable, then it does not have to be included. For example, if there are no meals included in the package and it is clear from the context that no meals are included and there is no suggestion anywhere that meals are included, the explicit information ‘no meal’ would not have to be given.



This is the standard Information required before every booking:

- 1

The travel destination, the itinerary and periods of stay, with dates and, where accommodation is included, the number of nights included.
- 2

The means, characteristics and categories of transport, the points, dates and time of departure and return, the duration and places of intermediate stops and transport connections.
- 3

Where the exact time of departure and return is not yet determined, the organiser and, where applicable, the retailer, must inform the traveller of the approximate time of departure and return.
- 4

The location, main features and, where applicable, tourist category of the accommodation under the rules of the country of destination.
- 5

The meals which are included in the package.
- 6

The visits, excursions or other services included in the total price agreed for the package.
- 7

Where it is not apparent from the context, whether any of the travel services are to be provided to the traveller as part of a group and, if so, where possible, the approximate size of the group.
- 8

Where the traveller’s benefit from other tourist services depends on effective oral communication, the language in which those services are to be carried out.
- 9

Whether the trip or holiday is generally suitable for persons with reduced mobility and, upon the traveller’s request, the precise information on the suitability of the trip or holiday considering the traveller’s needs.
- 10

The trading name and geographical address of the organiser and, where applicable, of the retailer, as well as their telephone number and, where applicable, e-mail address.
- 11

The total price of the package inclusive of taxes and, where applicable, of all additional fees, charges and other costs or, where those costs cannot reasonably be calculated in advance of the conclusion of the contract, an indication of the type of additional costs which the traveller may still have to bear.
- 12

The arrangements for payment, including any amount or percentage of the price which is to be paid as a down payment and the timetable for payment of the balance, or financial guarantees to be paid or provided by the traveller.
- 13

The minimum number of persons required for the package to take place and the time-limit before the start of the package for the possible termination of the contract if that number is not reached. That time limit shall not be later than: 1. 20 days before the start of the package in the case of trips lasting more than six days. 2. Seven days before the start of the package in the case of trips lasting between two and six days. 3. 48 hours before the start of the package in the case of trips lasting less than two days.
- 14

General information on passport and visa requirements, including approximate periods for obtaining visas and information on health formalities, of the country of destination.
- 15

Information that the traveller may terminate the contract at any time before the start of the package in return for payment of an appropriate termination fee, or, where applicable, the standardised termination fees requested by the organiser, in accordance with regulation 12(1) to (6).
- 16

Information on optional or compulsory insurance to cover the cost of termination of the contract by the traveller or the cost of assistance, including repatriation, in the event of accident, illness or death.



“the Organiser of the package must indicate protection is in place to refund consumer payments”

**Schedule 2 (see above)** Providing the required information for website sales:

The provision of information in sales from a website are much easier.

Part 1 This provides for general information provided by the website.

Part 2 This lists the key rights under the Regulations and can be provided by a link. There are 12 Key Rights stated and these must be clearly stated on the website

Part 3 This is purely the need to send a link to the Regulations,

For bookings where it is possible to use links on the website, the consumer must be given the following information with a link through to the further information required on key rights:

“The combination of travel services offered to you is a package within the meaning of the Package Travel and Linked Travel Arrangements Regulations. Therefore, you will benefit from all EU rights applying to packages.”

In addition, the Organiser of the package must indicate protection is in place to refund the consumer payments and, where transport is included in the package, to ensure their repatriation if it becomes insolvent. More information on key rights under Package Travel and Linked Travel Arrangements Regulations 2018 (to be provided via a link)



**SHOP AND PHONE BOOKINGS**

As stated above and to ensure clarification the requirements are

Where the use of links is not possible, for example in a shop or call centre, the consumer must be given the following information:

The combination of travel services offered to you is a package within the meaning of the Package Travel and Linked Travel Arrangements Regulations. Therefore, you will benefit from all EU rights applying to packages. We will be fully responsible for the proper performance of the package.

Additionally, as required by law, we have protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation if they become insolvent. (Information on key rights must also be given.

The 'Key Rights' could be laminated and provided for the consumer before making the sale or the basic information could be read out to the consumer. Looking at the situation practically, the simplest solution would be for the consumer to be directed to the information in the brochure or website, especially the protection details in the new PTR's 2018. As explained above, the information in Schedule 1 would be discussed in the process of the sale.

And for telephone sales, the sales discussion should be able to highlight the basic Schedule 1 information, which could be emailed to the consumer during the sales process or reference made to the Organisers/ Principals brochure or website. Then we come to the 'Key Facts'. Access to their website and direction as to where the legal information can be found is one possibility, or an email highlighting the information, while the consumer is on the phone and told to refer to, is another

You can read out the key rights, but if this isn't practical then you can find a way to give your consumers access to them and let them know where to view them. For example, you can put the key rights on your website and refer clients to that, or you can email the key rights to clients as part of the booking process.

**LINKED ONLINE BOOKINGS**

Where a package might be created through linked online booking processes, e.g. a travel company with whom a booking is made, transmits the consumer's name, payment details and email address to another travel company, the first travel company must provide the consumer with the following information at the time of booking the first service: "If you conclude a contract with the other trader not later than 24 hours after receiving the confirmation of the booking from us, the travel

services provided by us and the other trader will constitute a package within the meaning of the Package Travel and Linked Travel Arrangements Regulations 2018. Therefore, you will benefit from rights applying to packages. We will be fully responsible for the proper performance of the package. Additionally, as required by law, we have protection in place to refund your payments and, where transport is included in the package, to ensure your repatriation if it becomes insolvent"

"The 'Key Rights' could be laminated and provided for the consumer before making the sale"

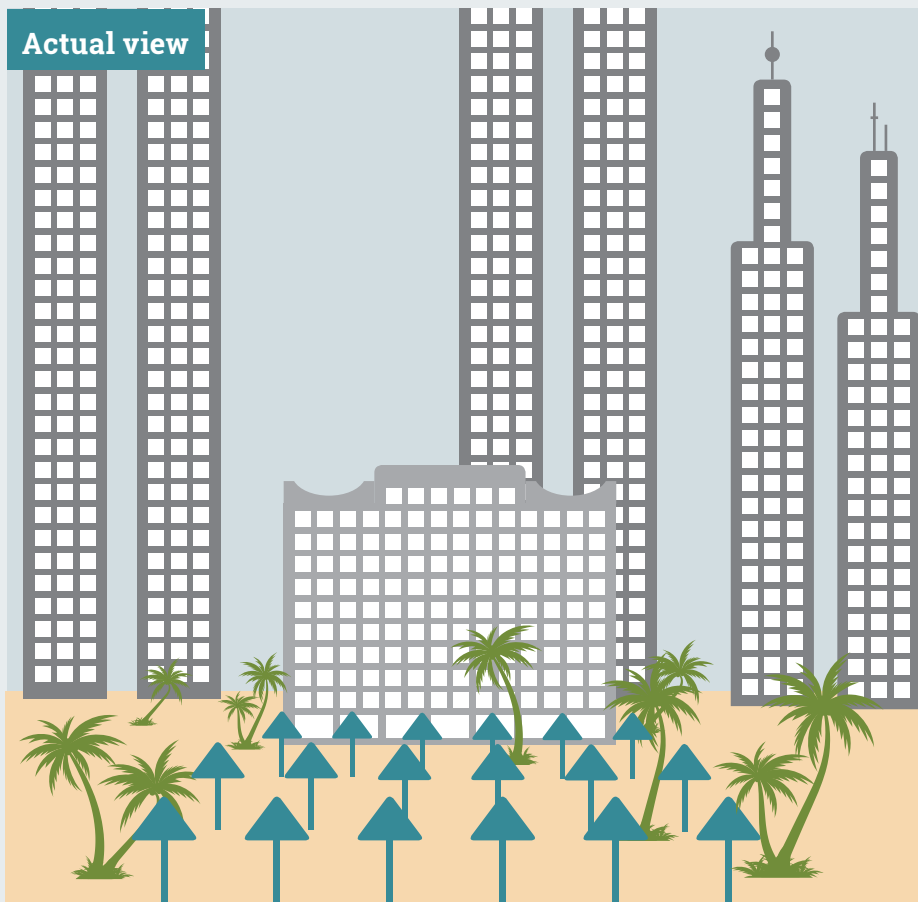






Case Study:  
OTA

This next case study shows an example of an Online Travel Agent (OTA) selling this Dubai hotel. The website showed the traveller the style of the hotel which prompted a sale. The OTA (as facilitator) also offered a flight which was purchased separately. The OTA complied with the pre-contract LTA information provisions, but, as you will see from the advertising picture and what the consumer found when they arrived, they had failed to mention the “construction works” underway at the time of the visit. A clear breach of the PTR’s 2018 for inaccurate information.



**Part 2 of Schedule 2  
highlights the ‘Key rights’  
under the PTR’s**

In all cases the consumer must then be given access to the following information on the key rights via a link where possible or, if that is not possible, by other means

1. Consumers will receive all essential information about the package before concluding the package travel contract.
2. There is always at least one trader who is liable for the proper performance of all the travel services included in the contract.
3. Consumers are given an emergency telephone number or details of a contact point where they can get in touch with the organiser or the travel agent.
4. Consumers may transfer the package to another person, on reasonable notice and possibly subject to additional costs
5. The price of the package may only be increased if specific costs rise (for instance, fuel prices) and if expressly provided for in the contract, and in any event not later than 20 days before the start of the package. If the price increase exceeds 8 % of the price of the package, the consumer may terminate the contract. If the

organiser reserves the right to a price increase, the traveller has a right to a price reduction if there is a decrease in the relevant costs.

6. Consumers may terminate the contract without paying any termination fee and get a full refund of any payments if any of the essential elements of the package, other than the price, are changed significantly. If before the start of the package the trader responsible for the package cancels the package, consumers are entitled to a refund and compensation where appropriate.
7. Consumers may terminate the contract without paying any termination fee before the start of the package in the event of exceptional circumstances, for instance if there are serious security problems at the destination which are likely to affect the package.
8. Additionally, consumers may at any time before the start of the package terminate the contract in return for an appropriate and justifiable termination fee.
9. If, after the start of the package, significant elements of the package cannot be provided as agreed, suitable alternative arrangements will have to be offered to the consumer at no extra cost. They may terminate the contract without

paying any termination fee, where services are not performed in accordance with the contract and this substantially affects the performance of the package and the organiser fails to remedy the problem.

10. Consumers are also entitled to a price reduction and/or compensation for damages where the travel services are not performed or are improperly performed.
11. The organiser must provide aid if the consumer is in difficulty.
12. If the organiser or, in some Member States, the retailer becomes insolvent, payments will be refunded. If the organiser or, where applicable, the retailer becomes insolvent after the start of the package and if transport is included in the package, repatriation of the consumers is secured
13. Website address or link to website where the Package Travel and Linked Travel Arrangements Regulations 2018 can be found - <https://www.legislation.gov.uk/uksi/2018/634/contents/made>

Additional information to be provided in the package travel contract  
In all cases, the consumer must also be given the following information in the package travel contract.



1. Any special requirements of the consumer which the organiser has accepted.
2. Information that the organiser is - (a) responsible for the proper performance of all travel services included in the contract. (b) obliged to provide assistance if the consumer is in difficulty.
3. The name of the entity in charge of insolvency protection and its contact details, including geographical address and, where applicable, the name of the competent authority and their contact details

4. The name, address, telephone number, e-mail address and, where applicable, fax number of the organiser's local representative, of a contact point or of another service which enables the consumers to contact the organiser quickly and communicate with the organiser efficiently, to request assistance when the consumer is in difficulty or to complain about any lack of conformity perceived during the performance of the package.

5. Information that the consumer is required to communicate any lack of conformity which they perceive during the performance of the package.
6. Where minors who are unaccompanied by a parent or another authorised person travel on a package contract which includes accommodation, information enabling direct contact at the accommodation by a parent or another authorised person.

7. Information on available in-house complaint handling procedures and on the applicable alternative dispute resolution (ADR) entity, as well as signposting to the European Commission's online dispute resolution (ODR) platform.
8. Information on the consumer's right to transfer the package contract to another consumer.

This next element of 'Best Practice' concerns the information requirements for the sales of Linked Travel Arrangements (LTA's) If you sell an LTA, you must provide the consumer with the following information in a clear, comprehensible and prominent manner:

- (i) that the consumer will not benefit from any of the rights applying exclusively to packages under the Regulations
- (ii) that each service provider will be solely responsible for the proper contractual performance of the service
- (iii) that the consumer will benefit from insolvency protection that only provides for the refund of the payments they make to the company facilitating that LTA, if that company fails, and where, as a result, a travel service which is part of the LTA is not performed. If that company is responsible for the carriage of passengers, the insolvency protection must also cover the consumer's repatriation.
- (iv) Consumers must also be provided with a copy of the Regulations. They can be found at <http://www.legislation.gov.uk/ukdsi/2018/9780111168479/> contents

“the Organiser might have intended to create a LTA, but be responsible as if they were the organiser of a package”

- (v) All this information must be provided before the consumer is bound by any contract leading to the creation of an LTA. Standard wording in the schedules to the regulations should be used, as explained in the 'package holiday' requirements above, if it applies to the LTA they're selling.
- (vi) It is important to understand that, if the consumer is not given the necessary information at the right time and in a clear, comprehensible and prominent manner, then even if the Organiser might have intended to create a LTA, they will be responsible for the performance of the travel services included in the LTA as if they were the organiser of a package.



CANCELLATION and Significant Change requirements under the Package Travel and Linked Travel Arrangements Regulations 2018

Changes can be made to a Booking once a booking has been made by the consumer.

It’s important that both the Organiser and consumer understand the impact of any changes so that no misunderstandings arise.

It’s at this stage that the importance of correct and clear information in the Booking Conditions is paramount.

Changes by the Principal/ Package Organiser:

It’s important to distinguish between changes that might be considered minor changes and those which might be considered major or significant changes leading to a cancellation.

Where a change is minor, Organisers should notify consumers but there’s no requirement for them to offer any alternative arrangements, refunds or compensation.

Where a change is a significant change or a cancellation of the booking, the Regulations are clear: Travel Services should not be cancelled unless:

i) it is necessary to do so as a result of unavoidable and extraordinary circumstances (means a situation beyond the Organisers control, the consequences of which could not have been avoided even if all

reasonable measures had been taken) or,

- ii) the Client defaults in payment of the balance, or
- iii) the number of persons booked on the Package is smaller than the minimum number stated in the contract and the Organiser notifies the Client within the period fixed in the contract and in accordance with the Regulations. If Organisers cancel because their minimum number isn’t reached, they’ll not be in breach of the Regulations if they let the consumer know within the time period indicated in the holiday description and within the time limits set out in the Regulations, which are:

not later than—

- (i) in the case of trips lasting more than 6 days, 20 days before the start of the package;
- (ii) in the case of trips lasting between 2 and 6 days, 7 days before the start of the package;
- (iii) in the case of trips lasting less than 2 days, 48 hours before the start of the package.

If Organisers make a significant change to a booking or cancel a booking they must, without undue delay offer clients a choice of an

alternative comparable holiday (if available) or their money back.

So, it may be helpful to highlight just what we would consider cancellations:

We are likely to regard a tour, holiday or other travel arrangement as having been cancelled if it’s changed in such a way that the revised arrangements amount to the substitution of an entirely different tour, holiday or travel arrangements.

The following are examples of changes amounting to cancellations:

- a change of resort to one in a different country;
- a change in type of accommodation so that the holiday is fundamentally altered in nature;
- a change of flight time or delay of flight of more than 24 hours (in respect of a 14-day duration. A

- change of flight time less than 24 hours may still be regarded as a cancellation in respect of a lesser duration);
- a change of itinerary omitting a main advertised place or event (e.g. missing visiting an island as part of a specific island tour)

As explained, there could be cancellations or significant changes, and these are examples of significant changes:

- a change of resort;
- a change of accommodation to that of a lower category and/or price;
- a change of flight time or delay of flight of more than 12 hours (in respect of a 14-day duration. A change of flight time less than 12 hours may still be regarded as a significant change in respect of a lesser duration);

- a change of airport that’s inconvenient to the client.

The Regulations are specific and indicate the alteration of any of the following elements could be a ‘significant change’;

1. The travel destination, the itinerary and periods of stay, with dates and, where accommodation is included, the number of nights included.
2. The means, characteristics and categories of transport, the points, dates and time of departure and return, the duration and places of intermediate stops and transport connections.
3. Where the exact time of departure and return is not yet determined, the organiser and, where applicable, the retailer, must inform the traveller of the approximate time of departure and return.

4. The location, main features and, where applicable, tourist category of the accommodation under the rules of the country of destination.

5. The meals which are included in the package.

6. The visits, excursions or other services included in the total price agreed for the package.

7. Where the traveller’s benefit from other tourist services depends on effective oral communication, the language in which those services are to be carried out.

8. Whether the trip or holiday is generally suitable for persons with reduced mobility and, upon the traveller’s request, the precise information on the suitability of the trip or holiday considering the traveller’s needs.





## Advertising and Pricing requirements under the Package Travel and Linked Travel Arrangements Regulations 2018

It goes without saying that advertising and pricing are the most likely problems enforcement will have referred. The Regulations refer to these elements clearly. Complaints can often be traced back to problems with advertising, be it inaccurate brochure descriptions, unclear information on a website, or press adverts that don't contain adequate information. The Regulations define advertising as: "a means of promoting Travel Arrangements by any printed, viewable, audible or other form" so it includes brochures, websites and, of course, telephone sales. Consumers must be provided with enough information so that they can make informed choices. Adverts must be based upon accurate information. Investigations will always consider whether Organisers have procedures in place to verify the accuracy of the descriptions in their advertising as well as being able to substantiate any claims.

The important thing to remember, therefore, is that price indications, in whatever form they are advertised, should be as complete and transparent as possible.

Everything that the consumer must pay must be in the basic price. If there are optional extras, these must be stated. For all advertising, including brochures and websites, the following rules apply:

- (i) All non-optional costs which are for a fixed amount and which can be paid in advance must be included in the basic advertised price.
- (ii) If there are non-optional costs that aren't paid in advance, for example, departure charges at destination airports which can only be paid by the consumer at the airport, or local taxes or resort fees that are payable to the hotel, the consumer must be given information on these. It must be clear to them that these additional amounts are payable by them, before they confirm the booking. If these charges are subject to change, which they often are, Organisers should provide the most up-to-date amount and state that it's subject to change.
- (iii) For brochures, where Organisers know that specific non-optional costs might be subject to change while the brochure is still current, details of those specific charges should be prominently stated near to the basic price in a clear and transparent format. Organisers must be able to provide evidence to justify the level of such costs and why such costs might be subject to change and are not of a fixed amount.

"Complaints can often be traced back to problems with advertising."

(iv) However, optional extras don't have to be included in the basic price but consumers must be given information on them. They should be made in a clear and unambiguous way. The details must come at the start of the booking process.

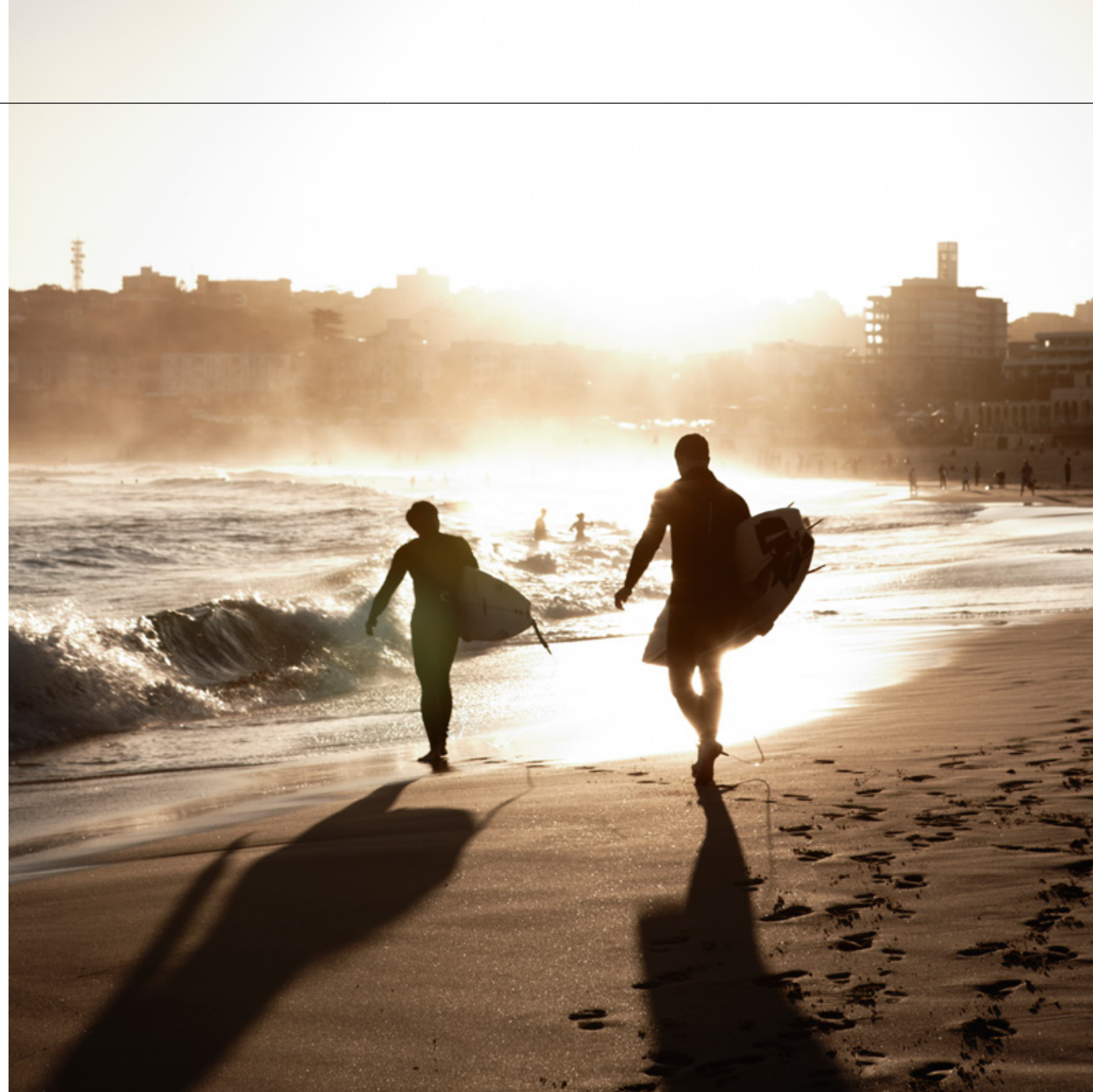
(v) Organisers cannot change the prices shown in brochures or on websites unless they specifically and expressly provide within the brochure or website for changes to be made to the prices.

(vi) Any changes to the prices shown in brochures or on websites shall be made known to consumers before a booking is made. It is very important that Organisers, who might be asked to provide evidence that this has been done are advised to ensure that this evidence remains in a durable form, e.g. in writing or as saved messages on booking systems

(vii) Changes to prices after a booking has been made are subject to the booking conditions of the package organiser concerned and to the Regulations. Members should be aware that, in respect of package holidays, there are restrictions on the circumstances in which surcharges can be applied and the amounts that can be surcharged. The Regulations state an Organiser can only increase the price of a package after it's been booked for three reasons:

- Increase in transport costs due to changes in fuel prices or other power sources.
- Changes in taxes or fees on travel services imposed by third parties not involved in performance of the package, e.g. Government and tourist taxes.
- Change in Exchange rates relevant to the package.
- 

(viii) Where Organisers are forced to increase the price of a package holiday by more than 8%, then they must inform the consumer without undue delay and provide the consumer with the option to terminate the contract without paying a termination fee. These proposed changes must be communicated to the consumer in a clear, comprehensible and prominent manner on a durable medium





The next important element is the availability of the advertised prices.

Our advice to Organisers and Agents is that if a price is displayed and not all the holidays or flights are available at that price, they need to take great care to ensure that the advert is not misleading. They should provide full, clear information about the availability and use ‘from’ pricing. There are some guidelines for advertisers, mainly from the Advertising Standards Authority (ASA):

- state that prices are from... if not all the flights or holidays are available at the advertised price:
- ensure that there are enough flights or holidays at the lead-in price so that consumers have a reasonable prospect of obtaining them.

- The previous rule of thumb - that a minimum of 10% of the product available must be offered at the ‘from’ price - no longer applies. Current guidance from us is that a ‘significant proportion’ must be available at that price. Trading Standards and the ASA will consider each complaint on its own merits and so, if an advertiser has 10% of its stock (by volume) available at the ‘from’ price, it won’t necessarily be the case that this will comply with the requirement for it to be a significant proportion.
- state that the price is ‘subject to availability’ and if availability is limited, be clear about this. If the advertised price isn’t current, consider stating that the price is accurate as of the last update and an up-to-date price will be provided when the consumer contacts.
- ensure that seats available at the from price are spread reasonably evenly across the travel period. Also, if there are significant periods when seats cannot be offered at the from price, this needs to be stated.

- make clear the destinations to which quoted prices relate and that a promotional price applies to selected flights on certain routes.
- The ASA has also issued guidance on ‘Working with Third Parties’. This covers advertising online using shared systems, where advertisers are unlikely to be able to monitor real time availability of flights or accommodation. Prices may not be available by the time consumers attempt to make a purchase. Organisers should take reasonable steps to reduce the likelihood of consumers being misled. [www.asa.org.uk](http://www.asa.org.uk)

“Current guidance from us is that a ‘significant proportion’ must be available at that price”



Case Study

These mock adverts give you an example of how confusion with advertising can sometimes cause problems for consumers:

So, there should be a ‘significant proportion’ at this price

Sample advert text

Enjoy a break in France

Great value 4-day breaks this Autumn!

Only  
**£175**  
Car + 2 return!

So there should be a ‘significant proportion’ at this price!

Sample advert text

Fantastic fares to St Malo!

Save £££’s by travelling to St Malo with us!

From  
**£235**  
Car + 2 return!

So, all the services shall be at this price

Sample advert text

4 Nights in Jersey

At our 4\* waterfront hotel

From only  
**£299**  
Per person



## Payment Surcharges and the use of Credit Cards

The Consumer Rights (Payment Surcharges) Regulations 2012 (amended by the Payment Services Regulations 2017) state that Holiday and travel Businesses are not permitted to impose surcharges for taking payment by a consumer debit or credit card, or an electronic payment service (this electronic payment service is usually some form of digital financial instrument (e.g. PayPal) that is backed by a bank or an intermediary).

Whichever methods of payment a business accepts, there are costs associated with handling and processing the payment. Most businesses treat these costs like any other costs, and they simply set prices at a level that is intended to generate an acceptable return or rate of profit.

However, in some cases, businesses have sought to cover or offset the cost of accepting certain payment methods by imposing surcharges on customers who choose to use those payment methods. Businesses are no longer permitted to impose surcharges for paying by debit card, credit card or electronic payment services. The ban on surcharges does not apply to commercial debit or credit cards.

This has been an important change for Holiday and travel businesses and the following details confirm the change in law:

Businesses cannot impose any surcharge for using the following methods of payment:

- consumer credit cards, debit cards or charge cards
- similar payment methods that are not card-based (for example, mobile phone-based payment methods)
- electronic payment services (for example, PayPal)
- Businesses can make a charge for accepting a payment by any other method - for example, cash, cheques, standing orders and direct debits.

However, under the Regulations, if the customer must pay a surcharge for using a particular method of payment, then that surcharge must not be more than it costs the business to process that method of payment. The Regulations do not specify any maximum amounts as the costs should reflect the actual cost to the individual business of processing the payment.

A business can apply the payment surcharge based on the average cost incurred in processing payment by a particular means.



Where a surcharge is made for any payment method, this information must not be hidden. Under the **Consumer Protection from Unfair Trading Regulations 2008** (see Addendum), businesses must not give misleading information to travellers, nor may they hide or omit information that the traveller needs in order to make an informed decision.

It is important to clarify that the Regulations only apply to charges for using a particular method of payment. Businesses are still permitted to charge other fees - such as delivery fees, booking fees or administrative fees - as long as these are the same irrespective of the payment method. For example, a booking fee that is £10, or is 10% of the total price, regardless of whether payment is by cash, debit card or another method, is not a payment surcharge and is not covered by the Regulations. Note, however, that the price of holiday or travel services, must be quoted inclusive of any

non-optional surcharges wherever it appears and always before the traveller takes any action towards making a booking.

These rules relate to bookings concluded on business premises (e.g. A travel agent), contracts concluded away from business premises and those concluded at a distance - for example, a purchase by telephone or via websites, Facebook etc.

Travellers are entitled to seek redress and a refund if asked for a payment surcharge that is banned or is more than allowed by the Regulations. This right applies whether enforcement action has also been taken by trading standards.

### Use of Credit Cards

Under Section 75 of the Consumer Credit Act 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the Travel Agent or Organiser.

This will mean the credit card company it is just as responsible as the agent or organiser for the service supplied, allowing consumers to also put a claim to the credit card company. They do not have to reach a stalemate with the agent or organiser before contacting their credit card provider - they can make a claim to both simultaneously, although they cannot recover their losses from both.

“Regulations only apply to particular methods of payment”

Section 75 of the Consumer Credit Act also applies to foreign purchases as well as holidays and travel bought online or by telephone. For these protections to apply the purchase must be over £100 but under £30,000.

To make a claim under Section 75 the consumer doesn't need to have paid more than £100 or the full amount on their credit card – the card company is liable even if they made only part of the payment (a deposit, say) on their card.

It's the value of the travel service they are buying that is key - not the amount paid on the card.

For example, if the consumer booked a hotel and paid a £60 deposit with their credit card and the balance of £420 by cheque, they would be covered for the whole £480 if the hotel went out of business.



Complaint Resolution

It's a legal requirement that Organisers inform their clients that if they have a complaint, they must make it as soon as possible. This includes complaining to you, as Organiser or Travel Agent, if they dealt with the consumer's booking and to the supplier of the service in question e.g. the hotel.

- In terms of pursuing a complaint when they return home, Organisers can set out a time limit for this, but it mustn't be unreasonably short. Consumers are recommended to set out their complaint within 28 days. This is however, not a mandatory requirement, which would automatically exclude them from any legal action. However, the Organiser may indicate to consumers that if they fail to complain IN RESORT then they may reduce their rights under the booking terms. This is setting out the basic failure-to-mitigate principle which is recognised in law. If the consumer doesn't give you or your supplier the chance to put things right, they may increase their loss and they can't claim any such increased loss back from you in most cases.
- The Consumer Rights Act 2015 (see the Addendum) requires that services provided by traders to consumers should be performed in accordance with the contract, with reasonable care and skill, at a reasonable price, etc. It provides

consumers with remedies they can require from the trader if the service provided does not meet the terms of the contract - for example, a reduction in the price paid.

- As a general rule, if something goes wrong with the supply of goods and services, consumers can claim their direct losses, but they cannot claim compensation for distress and inconvenience. However, the law makes an exception for some types of contract, including contracts for package travel. Therefore, as the purpose of a holiday is usually to provide enjoyment and relaxation, a consumer may be able to claim compensation for inconvenience and distress, on top of a refund and any other losses, if things go wrong.

“As a general rule, consumers can claim their direct losses, but they cannot claim compensation”

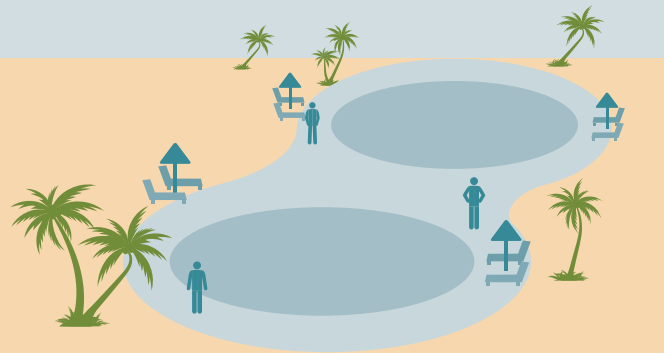
- As regards the Organiser responding to a consumer complaint, the Competitions and Markets Authority covered this point in their campaign on fair terms and conditions. They were unhappy with the booking conditions that specify a response within 28 days and ABTA advised its members to respond to consumer complaints as soon as possible, ideally within 28 days
- What is a very positive change is the offer of Alternative Dispute Resolution for complaints which cannot be resolved. ABTA have provided a number of methods of complaint resolution, including conciliation, arbitration as well as the consumer being able to use ABTA's approved Alternative Dispute Resolution (ADR) scheme, available through [www.abta.com](http://www.abta.com). WE have approved their ADR which is also positive news for consumers booking with their members! The consumers have the choice of ADR or court and nothing should be included that would deny clients the option of taking action in the courts if they so wish.



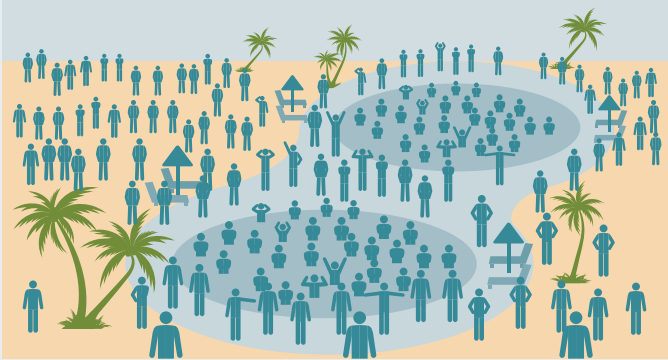
Case Study

This complaint concerned a description from a holiday accommodation website, describing the hotel as being in, “a quiet secluded resort” The TSD thought it misleading and the CPR's were used to investigate.

Description



Reality



At the same time a complaint was made to the holiday accommodation provider and a successful conciliation process enable a full refund to be made. The trader had not informed the consumers that there was a major public holiday in the country at the time of their visit, hence the number of people in the hotel pool!



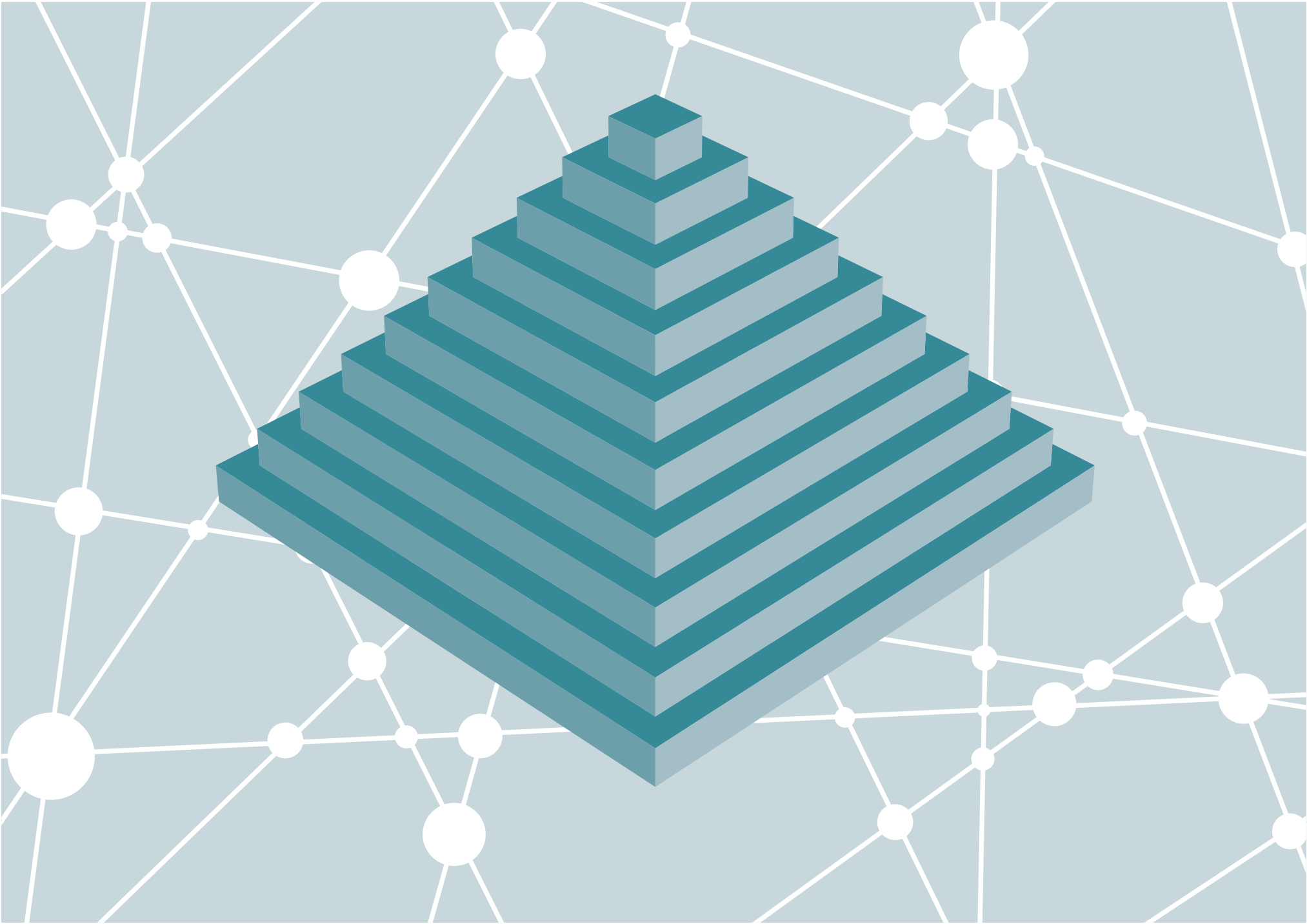
Pyramid Selling and Brexit

And finally, reference should be made to two very relevant events. The first is an investigation into Pyramid Selling and whether a major online Organiser/Retailer of travel services is practicing this illegal trading or whether it is just Multi-Level Marketing, which is legal.

There have been a number of enquiries as to whether this online trader was involved in an illegal pyramid selling scheme. There are two schemes, one of which is legal and the other is illegal. Online Organisers and Agents may well be introducing this idea. There is firstly, a multilevel marketing (MLM) scheme and then a pyramid selling scheme. An MLM works like this: As well as selling their own holidays, they recruit other people to be in their team (the homeworkers) and make money from the holidays they sell.

The homeworkers could also, theoretically, do the same thing (i.e. recruit others to sell the holidays), so they will make money from those they recruit, and the company makes money from everyone in the chain below them. MLM's are legal and you can even receive commission for recruiting people into your team

So, it is not illegal to recruit other people into the scheme, and it is not illegal to receive money for recruiting other people into the scheme; what makes it illegal is when you receive more money from recruiting people



than from the sale of the holidays. Clearly pyramid selling schemes, where there is no product at all, and participants receive money solely by recruiting other people into the scheme, are illegal. This is not an easy concept to grasp! But more online Companies based here and abroad, are considering this model.

The second issue concerns Brexit:

**Green cards for motorists**

In the event of a no deal, if the UK is no longer part of the free circulation area you will need to obtain a green card if you are taking your vehicle with you when travelling around Europe. A green card proves you have the necessary motor insurance. This includes motorists travelling between Northern Ireland and the Republic of Ireland. You may be fined or required to buy additional insurance if you do not travel with a green card. Your motor insurance provider should provide you with a green card free of charge.

**Travel insurance and the EHIC**

If you are planning on travelling to Europe after Brexit, check the terms of your travel insurance policy documents before you go to ensure you understand what you are covered for. The validity of your European Health Insurance Card (EHIC) will be challenged and it appears, as usual, the best advice is to contact your provider.





More information on travel







[www.businesscompanion.info](http://www.businesscompanion.info)