

## Package holidays

### Package holidays - what the law says

When you buy a package holiday, the law requires the tour operator to use reasonable care and skill in arranging the holiday. Also, the holiday must:

- **match its description.** This means that any description of the holiday in the brochure or given by a travel agent or tour operator must be accurate. For example, if the brochure says the hotel is within walking distance of the beach, it must be so; *and*
- **be of a reasonable standard,** bearing in mind, for example, the price paid and the location. For instance, you would not expect a budget priced holiday to be of the same standard as a luxury holiday. However, whatever the price of the holiday, you would expect basic standards of hygiene to apply.

Once a holiday booking is confirmed, there is a **binding contract** between the tour operator and the person who booked the holiday. The terms of the contract are made up of:

- the booking conditions, which might, for example, be printed in the brochure; *and*
- information in the brochure, *and*
- any information given by the travel agent when the holiday was booked.

Problems with package holidays are usually a result of one or more terms of the **contract having been breached.** For example, if the brochure said that the hotel had certain facilities, such as a swimming pool and there wasn't one, that part of the contract has been broken and you may be entitled to compensation (see below).

If you used your **credit card** to pay for the holiday and the cost was more than £100 and less than £30, 000, the credit card company may be **equally liable** for any breach of contract. This means that you could claim against the travel operator, the credit card company, or both of them jointly.

## Prices - what the law says

The law says that all holiday brochures must give the price **legibly, comprehensibly and accurately**. Once confirmed, the price of the holiday can be **increased** only if the booking conditions state that this is allowable **and** the increase is for one of the following reasons:

- an increase in transport costs, for example, fuel; *or*
- to cover fees and taxes for services, such as landing fees; *or*
- variations in the exchange rate.

If the contract allows for an increase in price, the first 2% must be absorbed by the tour operator. If the increase is significant, you should be given the opportunity to cancel the holiday. No price increase should be passed on in the period 30 days before departure.

## Your rights if things go wrong

### Your money back

Once a holiday booking is confirmed, you have a right to a **refund without having to pay a cancellation fee** if:

- the tour operator **cancels** the holiday. If the operator offers an alternative holiday, you can choose whether to accept the alternative or the refund. The alternative holiday should be of at least the same standard as the one you booked or, if it is of a lesser standard, you should be refunded the difference in price between the original holiday and the alternative; *or*
- **the price of the holiday has been significantly increased**. This would probably mean an increase of 10% or over. If you don't want a refund but think the increase is too high, you could consider paying the full amount but make clear that you are doing so 'under protest', and then claim a refund of the amount you think is unreasonable.

## Compensation

Once a holiday booking is confirmed, you may be entitled to compensation if:

- there is a **breach of contract** which, for example, results in the holiday being a complete disaster, or if the departure dates were altered significantly. You would not be able to claim compensation if circumstances were outside the operator's control, for example, if it rained continuously; *or*
- the tour operator has been **negligent** and as a result someone booked on the holiday suffers injury, illness or loss. **Always take legal advice before deciding whether to accept compensation for personal injury; *or***

- your **luggage has been lost**. However, in practice it is usually quicker and easier to claim through any holiday insurance; *or*
- you have incurred additional expenses or suffered inconvenience because of a breach of contract or negligence, for example, if your flight was delayed; *or*
- you have suffered disappointment or mental distress.

The amount of the compensation would depend on the seriousness of the breach of contract. You may be able to claim compensation over and above the price of the holiday.

## How to solve your problems

Once you have decided what your rights are, contact the **travel agent** or **tour operator**. As the contract is with the tour operator, they are responsible for dealing with most complaints. Even if the problem has been caused by the actions of a third party, for example, staff at your hotel, the tour operator may still be responsible, if they were aware there was a potential problem but did nothing to rectify this.

The following steps should solve your problems:

- **complain as soon as possible after the problem arises**, if possible to a representative of the tour operator in the resort and insist that they complete a report on the problem. Gather as much evidence as you can. Take photographs, and ask for witnesses' names and addresses. Back this up with a letter to the tour operator within 28 days of your return. Refer in your letter to any booking reference number or send a copy of your invoice. Keep a copy of your letter and send it by recorded delivery
- **if someone has been injured** or you suspect that a **criminal offence** has been committed, for example, the tour operator claims that the hotel has a swimming pool or air conditioning but it does not, you should report the matter to the Citizens Advice Consumer Service on 03454 040506
- **if you aren't happy with the response**, write to the tour operator and the credit card company, if applicable, repeating your complaint and requesting compensation. Give them fourteen days to resolve the matter or tell them you will consider taking legal action. If the operator has sent you a cheque for compensation, you can cash the cheque but write back explaining why you feel the amount is inadequate and say you are accepting the money **on account**. But **don't** cash the cheque if the letter says '**encashment is deemed acceptance**', because by doing so, you are accepting the amount as a final settlement

- **if you are still dissatisfied**, find out if the tour operator or travel agent is a member of a trade association such as the **Association of British Travel Agents (ABTA)**. **ABTA** operates an arbitration and conciliation service to resolve disputes but you will have to pay a fee for this. Also any decision is likely to be **legally binding** and will prevent you taking court action. You should try to use an arbitration and conciliation service or alternative dispute resolution scheme (ADR) where available before taking court action. This is because the amount of compensation a court may award you could be reduced if you have not tried other ways of resolving the problem before going to court. If you want to discuss the arbitration service, you should contact ABTA on the number at the end of this fact sheet.
- **if you choose not to use ABTA or if the tour operator doesn't respond**, refuses to do anything, or makes a final offer you are unwilling to accept, your only other choice is to go to court. **Remember court is your last resort**. Before starting court action, you need to consider whether you have sufficient **evidence**. You also need to find out if the tour operator is **solvent**. It's not worth suing a person or company with no money. **If you have lost money because of problems with a package holiday, don't waste money on a case you can't win.**

## Organisations that deal with complaints about package holidays

### Association of British Travel Agents (ABTA)

ABTA represents travel agents and has a code of practice, which its members must follow. If one of its members breaks the code, ABTA's legal department will investigate the matter internally but it doesn't take up cases on a customer's behalf. ABTA runs an **arbitration scheme** which can deal with claims up to £7,500 per booking, but it **doesn't deal** with claims for compensation for illness or injury. You can contact them through their website at <http://abta.com> or on 020 3117 0599. There is a fee, but this will be refunded if the claim is successful. The **deadline** for applying to use the service is nine months from the end of the holiday.

### Association of Independent Tour Operators (AITO)

The AITO represents independent tour operators and has a code of practice, which all its members should follow. It also runs an independent mediation service. If you want to use this service, there is a non-refundable fee. Contact AITO on: **020 8744 9280**.

## Advertising Standards Authority (ASA)

If the holiday is not as described in the brochure or newspaper advertisement, you can complain to the Advertising Standards Authority. ASA cannot award compensation but can take action to have a brochure or advert withdrawn or changed so that it does not mislead others. For further information, contact the ASA enquiry desk on: **020 7492 2222**.

## Other fact sheets that might be helpful

- Buying over the internet
- Credit
- Alternative Dispute Resolution

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