



Unit G

Holidays and Travel

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Introduction

A holiday is likely to be the biggest single purchase C makes without seeing what they are getting as there is usually total reliance on what is seen in a brochure or on a website. Some holidaymakers buy traditional package holidays, where their travel and accommodation are put sold together, but others make their own independent arrangements. The legislation that covers the various possibilities will differ but there is also some overlap between the regulatory provisions.

The stages of C's journey addressed in this unit are as indicated below:



The topics for discussion are indicated by the following section headings:

- G1: Independent holiday makers
- G2: Package holidays
- G3: Security
- G4: Travel issues
- G5: Timeshare etc

G1 Independent holiday makers

Increasingly, Cs book their own flights, accommodation and excursions separately and directly with the respective suppliers. This means there are then several contracts with different providers, who could well be based in various countries covered by a number of diverse legal systems. It is also possible that people have separate contracts made by one person in a group on behalf of everyone and or that travel agents are used to book one or more elements using different payment methods. The possible applicable areas of law are briefly indicated below with a reference to where a fuller discussion of the relevant provisions can be found.

In addition, even independent travellers use travel agents sometimes and many of them belong to trade associations, e.g. ABTA (the Travel Association), membership of which sometimes requires quite stringent controls over what has to be included in C's contracts.

G1.1 Contract law

If C has booked travel, accommodation and other requirements separately, they are likely to have a number of contracts with various different suppliers, e.g. airline, hotel and excursion organiser. Some of these contracts may be formed while C is away in a resort and there could be issues around who the contract is actually with (*Moore v Inghams*).

If C does not know who the contract is with, advisers should provide information and signpost for further support as per the Quick Reference Tool for Financial Capability.

G1.1.1 Express terms

A written contract will often exist for the various elements of an independent traveller's holiday arrangements. C may be asked to complete a booking form, tick a box online to say they have read and agreed the T&C or be referred to the relevant pages in a brochure. These will form part of the express terms of the contract along with any specific requests made by C and in the case of a direct hotel booking for example, may include matters such as:

- ✓ a description of the accommodation, e.g. 3 star hotel
- ✓ the facilities available at the hotel, e.g. a swimming pool
- ✓ any meals that are to be included in the price, e.g. bed and breakfast
- ✓ C's choice of room, e.g. with a sea view

If the hotel does not comply with these express terms, there is likely to be a breach of contract. The remedy available will depend on the importance of the term that has been breached and whether the contract has been affirmed.

G1.1.2 Implied terms

Most of the elements of any holiday arrangements will constitute the supply of a service and so will be covered by the CRA (unit C). It is likely that the price of, and time at which, such supplies are to take place will be agreed beforehand, but if not the obligations on T are to supply within a reasonable time [s52] and at a reasonable price [s51]. In addition, each service must be carried out:

- ✓ using reasonable care and skill (RCS) [s49]

- ✓ in accordance with information provided [s50]

These have the same meanings as in unit C and the requirement for a service to be performed in accordance with information provided will apply even if the service is exempt from the relevant provisions in the CCRs, because s50 applies regardless of whether the information is supplied to meet those Regulations and applies to information about both the T and the service.

Certain problems associated with flights may amount to a lack of RCS on the part of the airline, e.g. delays, denied boarding due to overbooking, lost luggage and damaged luggage. They may also be covered by other more specific provisions (section G4).

Any goods supplied would also be covered by the CRA and must therefore meet the requirements in table C2, unit C, relating to SQ, FFPMK and description etc.

G1.1.3 Remedies – express terms

The main CL remedy available to the independent holidaymaker for a breach of an express term will be damages (unit C, section C4.2), however, there may be situations when repudiation is possible, if there is a breach of a condition (**major breach**), which occurs before C has departed and the contract has not been affirmed, e.g. a change in the resort or travel dates. A description in a brochure that states that the room has a sea view is more likely to be a warranty with a breach leading to damages only (**minor breach**).

Damages claimed could include sums to represent:

- ✓ the difference in value between what was promised and what was supplied
- ✓ any mitigated consequential losses, e.g. alternative accommodation
- ✓ resulting distress and disappointment or loss of enjoyment (*Jarvis v Swan Tours Ltd*)

Contributory negligence can be a partial defence to a claim of lack of RCS in the same way that it can under the tort of negligence (delict), which may then result in C's damages being reduced (*Moore v Inghams*).

G1.1.4 Remedies – implied terms

For breach of the ITs under the CRA, the 1st stage remedy of repeat performance is available for a lack of RCS or performance not in accordance with information provided about the service [s55 CRA]; however; this will be impossible in many situations and so the 2nd stage remedy of a price reduction is likely to be more relevant [s56 CRA]. This is also the statutory remedy when performance is not in accordance with information supplied about T (Table C4, unit C).

Any reduction should be for an appropriate amount and refunds should be made to C within 14 days of T agreeing that C is entitled to one. T cannot exclude this liability but it can be restricted to not less than the contract price [s57(3) CRA]. Any such clause would also be subject to the fairness test [s62 CRA] and excluding liability for death or personal injury caused by a lack of RCS is not permitted at all [s65 CRA].

The CRA recognises that CL remedies could be pursued as an alternative, or alongside the statutory ones [s54(6) & (7) CRA] and it is also likely that contributory negligence by C would also be a partial defence for T when considering what is an appropriate amount for a price reduction.

G1.2 Misrepresentation

A misrepresentation may occur when a statement of fact is made before the contract is made and the other party relies on it to enter into a contract. Conversations may take place between C and the supplier, organiser or travel agent, before a booking is made. If the CCRs do not apply, these may not amount to terms of the contract. If the statements turn out to be false, C may have a claim for rescission of the contract or damages for a misrepresentation (unit J)(*Chesneau v Interhome Ltd*). Claims for damages are generally made under s2 of the Misrepresentation Act 1967.

However, if the false statement is made by someone other than the person with whom C has the contract, e.g. a travel agent, C will have to prove:

- a special relationship with that person
- reliance on the statement
- that it was reasonable to rely on the statement

based on the principles established in the case of *Hedley Byrne v Heller*. Any terms that exclude or limit liability for misrepresentation will be subject to the fairness test as discussed in unit C [s62 CRA].

G1.3 Negligence

If an independent traveller is suffering some harm or loss as a result of improper performance or poor service, but does not have a contract with the supplier, e.g. because it was booked by someone else on their behalf, then they may have claim under the law of negligence (tort of delict). Third parties will be able to use this area of law if they can establish:

- ✓ a legal duty of care is owed to them
- ✓ there has been a breach of that duty, i.e. negligence
- ✓ resulting damage from this breach

Further discussion of these areas, can be found in unit B. The remedy for negligence is damages and these can be awarded for reasonably foreseeable loss or damage, providing it is not pure economic loss, subject to the partial defence of contributory negligence by C. Negligent misstatements by third parties, resulting in pure economic loss, may give rise to liability if the principles in *Hedley Byrne v Heller* are satisfied.

G1.4 Unfair practices

Where T engages in a misleading action or an aggressive practice (MAPs), C may have an alternative course of action under Part 4A of the CPRs if such a practice played a significant role in C's decision to enter into a contract with that T (Figure E1, unit E). C would not be able to unwind the contract if they have already completed the hotel stay, taken the flights or otherwise fully consumed the service, or 90 days have passed since the performance of the service started;

however, if the MAP occurs before the service is used or C realises the misleading nature of it beforehand, then unwinding the contract maybe a possibility.

Alternatively, a discount may be appropriate, depending on which of the following relevant criteria apply, namely the:

- contract price (above or below £5,000)
- seriousness of T's activity
- impact on C
- amount of time since the MAP occurred
- availability of clear evidence that the market price was less than what C paid

Damages may be appropriate, in addition to either unwinding or a discount, or instead of these remedies, subject to the operation of the due diligence defence (Figure E2, unit E).

G1.5 Unfair terms

Some terms and notices will automatically have no effect, e.g. ones that purport to exclude liability for death or personal injury caused by negligence, which includes the use of RCS under the CRA, e.g. a notice by a hotel swimming pool that states that people use the pool at their own risk.

Other terms and notices will need to satisfy the transparency and fairness tests in order to be acceptable [s68 & s62]. Further discussion on unfair terms can be found in unit C.

G1.6 Consumer Credit Act 1974, section 75

If C pays for any of the elements of their holiday arrangements using a credit card, they may be able to make a claim against the credit card company for any breach of contract or misrepresentation, providing:

- ✓ the cash price is over £100 but does not exceed £30,000
- ✓ the credit card company has a business connection with the supplier of the service and C has booked directly with that supplier, or if a travel agent was used the money still went directly to the supplier not the agent

Further discussion on equal liability of creditors can be found in unit F.

If a C is not sure of the difference between credit and debit cards, advisers should provide information and signpost for further support as per the Quick Reference Tool for Financial Capability.

Summary

- When Cs book their own flights, accommodation and excursions separately and directly with the respective suppliers, there will be **several contracts with different providers**, who may be in various countries covered by a number of diverse legal systems.
- There are likely to be various **express terms** in each of these contracts, as well as the **implied terms under the CRA** requiring T to use RCS and supply or perform their service in accordance with any information provided about it and also about the actual T.
- The **main CL remedy** available to the independent holidaymaker for a **breach of an express term** will be **damages**, subject to contributory negligence if for lack of RCS; however, **repudiation** may be possible if there is a breach of a condition before C departs and the contract has not been affirmed.
- For **breach of the ITs under the CRA**, the 1st stage remedy of **repeat performance** is available for a lack of RCS or performance not in accordance with information provided about the service with the 2nd stage remedy of an appropriate **price reduction** within 14 days of T agreeing one is due, likely to be more relevant when repeat performance is impossible; this is also the statutory remedy when performance is not in accordance with information supplied about T.
- The law on **misrepresentation** may assist when a statement of fact is made before the contract is made and the other party relies on it to enter into a contract, especially if the CCRs do not apply to make it a term of the contract; C may have a claim for **rescission or damages** but if a **non-contracting party** makes the false statement, a **special relationship and reasonable reliance** on the statement will need to be established.
- The law on **negligence** may assist a C whose travel or accommodation arrangements were booked by someone else, where they suffer harm or loss as a result of improper performance or poor service, if they can show they were owed a duty of care, breach of that duty (negligence) and that the loss or harm results from this breach; the remedy is **reasonably foreseeable damages**, subject to a partial defence for T of **contributory negligence**.
- Where T engages in a **MAP**, C may have **alternative remedies under the CPRs** if such a practice played a significant role in C's decision to enter into a contract with that T; C would be able to **unwind the contract** within 90 days and if the service has not been fully consumed, or have an appropriate **discount** depending on various factor; **damages** may also be appropriate, as well or instead, subject to the due diligence defence.
- Some **terms and notices** will automatically have no effect, e.g. ones that purport to exclude liability for death or personal injury caused by negligence, which includes the use of RCS under the CRA; others will need to satisfy the **transparency and fairness tests in the CRA**.

- If C pays for any of the elements of their holiday arrangements using a **credit card**, they may be able to make a claim against the credit card company for any breach of contract or misrepresentation, providing the **cash price is over £100 but does not exceed £30,000** and there is a **business connection with the supplier** of the service, with whom C has booked directly or via an agent acting for the supplier.

G2 Package travel

EU law protects Cs who make package holiday arrangements. The relevant Directive, EU 2015/2032, was implemented in the UK via the Package Travel and Linked Travel Arrangements Regulations 2018 (PTR18), which:

- ✓ define a package
- ✓ define the main contractual parties
- ✓ specify what information should be provided before and when contracts for package holidays are concluded
- ✓ detail when civil liability arises in relation to a package and on whom it falls
- ✓ in some cases provide for specific remedies in the event of a breach (where remedies are not spelt out, CL ones will apply)
- ✓ require defined linked travel arrangements (LTAs), as well as packages, to have insolvency protection in place and comply with certain information requirements

The CCRs do not apply to package travel contracts and so information to be provided for C is that which is contained in the PTR18 and there will be no automatic right of free cancellation [r6(1)(g) CCRs], although rights to terminate in some circumstances exist, albeit subject to reasonable fees, depending on the reasons.

The CCRs do however, appear to apply to LTAs and so information to be provided for C about the actual travel arrangements, is that contained in the CCRs [NB passenger transport services are exempt from part of the CCRs, apart from r14, so will not have to provide the same information as other travel services]. Information on insolvency for LTAs will be that contained in the PTR18. There will be no automatic right of cancellation as LTAs are likely to be exempt from having to provide this [r28(1)(h) CCRs].

The PTR18 apply to contracts made on or after 1st July 2018 and so package contracts made before this date will be covered by the Package Travel, Package Holidays and Package Tours Regulations 1992 (PTR92). These Regulations did not contain any provisions about linked travel arrangements and had a more restricted definition of a package. It is the date the contract was made that determines which set of PTRs applies, not when the holiday is.

Travellers - a traveller is any person who is seeking to conclude a contract, or is entitled to travel on the basis of a contract concluded, within the scope of the PTR18 [r2(1)]. This will include those on whose behalf a package has been booked, e.g. other family members, and also someone who has had the package transferred to them, in accordance with the PTR18.

Organisers - The PTR18 do not recognise the term tour operator, they refer to organisers and the definition [r2(1)] is a T who combines and sells or offers for sale, packages, either directly or through another T or together with another T. An organiser can also be the T who transmits C's details from one T to another, when there is a type 6, or click-through, combination of travel services forming a package.

Retailers - The PTR18 do not recognise the term travel agent, they refer to retailers and the definition [r2(1)] refers to Ts, other than organisers, who sell, or offer to sell, packages, combined by organisers.

Travel agents can also put packages together and so may sometimes be acting as both retailers and organisers. Some tour operators sell directly and so can also be acting in both roles.

The PTRs refer to both organisers and retailers and also the “the relevant person” when considering who should be supplying C with information, which means whichever of the organiser or retailer has agreed to provide C with the appropriate information at the right time and in the required format [r4(3)].

Travel agents can be online organisations as well as operating from the the more traditional high street store.

G2.1 Definition of a package [r2(5)]

The definition of a package was subject to legal scrutiny in the courts on a number of occasions under the PTR92 [*CAA v ABTA*, *CAA v Travel Republic Ltd*, *Titshall v Qwerty Travel Ltd*]. Directive EU 2015/2302 expanded the definition of a package to try and accommodate some of the issues raised in these cases and include customised combinations of travel arrangements, in particular click-through online bookings.

A package is a combination of at least two different types of travel services for the purposes of the same trip or holiday, when available in one of 6 circumstances explained below and when it occurs across a period of more than 24 hours or there is an overnight stay [see G2.3 for exemptions].

G2.1.1 Travel services

There are 4 types of travel service and a minimum of 2 of the are required for the arrangement to be a package:

G2.1.1.1 Carriage of passengers, i.e. transport to a destination, such as flights, trains and coaches

It is unlikely to include a free hotel bus from the airport or station as the transport element is insignificant.

G2.1.1.2 Accommodation, not intrinsically part of transport or for residential purposes

A ticket on a sleeper train will not count as accommodation because the main aim is to travel from one place to another and staying aboard is simply a necessary element of the journey. A cruise, however, is a combination of transport and accommodation and so is a package, providing it is not exempt.

G2.1.1.3 Car, motorcycle or other motor vehicle rental

This element was introduced by the PTR18, it was not an option under the PTR92.

G2.1.1.4 Any other tourist services, not intrinsically part of any of the other 3, which accounts for a significant proportion or is advertised or represents an essential feature of the combination.

Examples include: admission to concerts, sports events, excursions or events parks, guided tours, ski passes and rental of sports equipment such as skiing equipment, or spa treatments.

If the other tourist service accounts for 25% or more of the value, this will be considered to be a significant proportion. There is no definition of value, however, the Directive recital makes it clear that it may be important to consider the intrinsic value if attempts are being made to avoid the application of the law by setting the price of the main service too high and the price of the tourist service too low.

On site hotel facilities could be other tourist services, depending on how access is gained. If access is part of the room rate it is unlikely to be a travel service in its own right. However; if an additional charge is made for access, and in particular if non-hotel guests are allowed in, there could be a separate travel service.

A tourist service, chosen and paid for after the performance of another travel service has started, will not contribute towards a package.

G2.1.2 Combinations of travel services

A package is a combination of at least 2 of the above 4 travel services, when this occurs in any of the following 6 circumstances, and it lasts for more than 24hrs or has an overnight stay. Some of these circumstances may overlap; they are where the travel services are:

1. Combined by one T and sold under a single contract, including requests/selections by C - a pre-arrangement is not necessary
2. Purchased from the same point of sale (POS), where they were selected and there was an agreement to pay for them during the same booking process, e.g. a shopping basket model
3. Offered, sold or charged at an inclusive or total price, e.g. a travel agent puts together a selection of travel services for the same trip, under different contracts but sells it to C for a total price
4. Advertised or sold using the word "package" or similar, for example, "combined deal", "all-inclusive" or "all-in arrangement" (recital 10 of the Directive)
5. Combined after the contract has been concluded, where T allows C to choose from a selection of different types of travel service, e.g. like a gift box arrangement
6. Bought from separate Ts through a linked online booking process, within a 24 hour period and the following C details are all transmitted from the first T to the 2nd, and or more Ts:
 - a. name
 - b. payment details
 - c. email address

If a C does not know the total cost of the contract – or the cost of separately paid elements of it - advisers should provide information and signpost for further support as per the Quick Reference Tool for Financial Capability.

The [BEIS Guidance](#) does not address the very common practice of travel agents adding on their own suggestions for Cs who are buying ready made packages from other tour operators. For example, C may select a ready made package of a flight and accommodation from a tour operator and book this through a travel agent, who may suggest sorting out car hire at the same time. The question arises as to whether this is another package if the combination is carried out in one of the 6 ways listed above, or an LTA, if it occurs as below, or simply a sale of a separate service.

G2.2 Linked travel arrangements (LTAs)

LTAs were introduced by the PTR18 and were not a category of travel under the PTR92. They catch some of the arrangements that fall between a package and independent travel. An LTA is defined as:

At least 2 different types of travel service for the same trip - not a package, but results in separate contracts with the individual providers, where T facilitates this [see G2.3 for exemptions]. The [BEIS Guidance](#) refers to type A and type B as follows:

G2.2.1 LTA Type A

C chooses travel services from different providers and has separate contracts and transactions, but through a single visit/contact with the facilitating T's POS.

Example: C visits a travel agent and buys a flight. After paying for the flight and whilst still at the travel agents, C buys accommodation for the same trip and pays for this separately.

There would need to be a clear interruption for there not to be a single visit or contact with the same POS, however, decisions would need to be made on a case-by-case basis.

G2.2.2 LTA Type B

C books a travel service with provider 1 and in a targeted manner is directed to provider 2 to buy another travel service for the same trip and the 2nd contract is made within 24hrs after confirmation of the 1st booking.

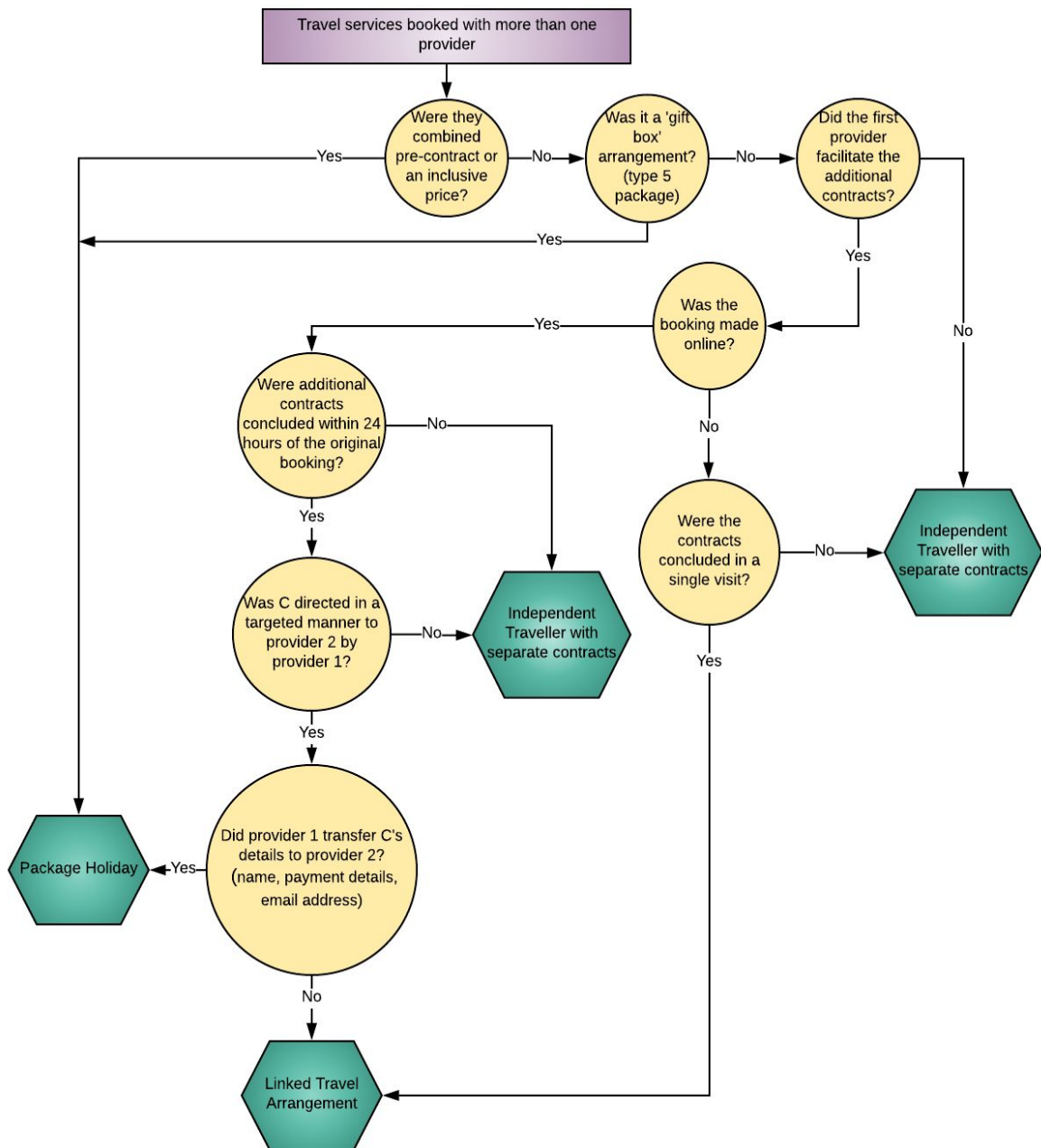
Example: C books a flight direct with an airline online and the confirmation email contains an invitation and link to a hotel, which C books within 24hrs. If the airline had transferred C's name, payment details and email details to the hotel company for C to make the second booking, the combination would have become a package. The absence of the transfer of the details means that the combination would be an LTA. Regardless of whether C's details had been transferred, if the 2nd contract had been made outside the 24hr period, the arrangements would be treated as separate contracts and so C would then be an independent traveller.

The requirement for the facilitation to take place in a targeted manner, means that simply providing information or advertising additional travel services will not lead to the creation of an LTA.

See Figure G1 to help determine which of the following types of holiday C has arranged when they have booked with more than one provider:

- a package
- an LTA
- independent travel

Figure G1: Type of holiday when C books with more than one provider



G2.2.3 Overview of LTA requirements

LTAs have to comply with insolvency security provisions, to some extent and their own limited information provisions (see section G3.3.3):

- includes PCI stage so C should know whether booking a package or an LTA
- prescribed wording laid down for this in standardised information forms (SIFs)

LTAs do not have to comply with the rest of the PTR18

- but if they don't comply with the insolvency requirements, some package rights will apply
- there is no liability for negligence of suppliers
- under the PTR18, there will be reduced requirements for the provision of information and contract terms (but the CCRs will apply, see above)

There is great potential for Cs to be confused about what an LTA is and how it differs from buying a package, for example, Expedia advertised their Add-on Advantage scheme in August 2018. C books a flight first, this is not an LTA at this point so no information is received about insolvency protection under the PTR18. In fact there is no protection against insolvency because at this point it is only a flight (assuming C has documents confirming they had a seat).

If C then chooses a hotel, at a 41% discount under the scheme, it may become an LTA (depending on how or when this is done) and they should then receive the appropriate SIF, from Expedia acting as an LTA facilitator, explaining the insolvency protection position, which is likely to be very limited or even non-existent. They may at this point think, actually I would prefer a package, but it is now too late to change as there are no cancellation rights in relation to the flight.

How such products are marketed will be covered by the CPRs and Part 2 of the CRA and the CCRs. If C is misled, treated unfairly or is not provided with relevant information this could lead to a TSS referral and or a MAPs claim (see unit E).

G2.3 Exemptions [r3(2)]

The definitions of packages and LTAs are subject to 3 exemptions: The PTR18 will not apply to arrangements:

- (1) covering a period of less than 24 hours, unless there is an overnight stay
- (2) made occasionally (not defined)
 - (a) on a not-for-profit basis, and
 - (b) for a limited group of travellers
e.g. a one off school trip
- (3) bought on the basis of a general agreement
 - (a) concluded between 2 Ts

- (b) for the purpose of booking travel arrangements in connection with the trade customer

Packages and LTAs organised regularly by charities, and commercial organisers acting for not-for-profit groups, would be covered by the PTR18.

G2.4 Civil liability for packages [r4-16]

If C is not provided with the right information at the appropriate time and in the correct format, or the package holiday does not turn out to be as described or as expected, there may be grounds for a remedy, depending on the nature and extent of the problem. The PTR18 provide for civil liability in relation to the following areas:

- ✓ pre-contract information
- ✓ contract terms
- ✓ pre-departure information
- ✓ transfer of bookings
- ✓ price alterations
- ✓ other pre-departure alterations
- ✓ cancellation rights for C
- ✓ cancellation by the organiser
- ✓ performance of the contract

The vast majority of these provisions are implied terms in the package holiday contract.

G2.4.1 Information requirements

There are no provisions in the PTRs relating specifically to misleading information. From both redress and enforcement perspectives this would fall under the remit of the CPRs or C may be able to make a claim for breach of an express term of the contract or misrepresentation. A holidaymaker who suffers loss as a consequence of a misleading can claim compensation for disappointment as well as direct financial loss [r16(3)] (*Jarvis v Swan's Tours Ltd., Mawdsley v Cosmoair Ltd.*).

The provisions covering price reductions and compensation refer to “lack of conformity” which presumably covers misleading descriptions as well as non or improper performance of the contract (see section 2.4.3).

The information requirements cover 3 stages:

- (1) Before the contract is made (PCI)
 - package details [Schedule 1]
 - key consumer rights information [Schedules 2, 3 or 4]
- (2) Contract conclusion
 - contract content [Schedules 1 and 5]
- (3) Before departure
 - documents and detail necessary for travel [r7(9)]

Most of the detail for these stages are contained in the 2 tables below G1(a) and G1(b). The information requirements for LTAs are covered in section G3.3.3.

The burden of proof is on T to show that all the information requirements, PCI and contract confirmation, have been complied with [r8].

There are a two main criminal offence provisions that organisers may breach in relation to the provision of information, however, there are numerous ways in which an offence could be committed in relation to each, as they cover not only providing the information but also how and when it is provided:

- failure to provide PCI in accordance with the PTR18 [r5(5)]
- failure to comply with certain requirements in relation to contract information [r7(12)]

In addition to the requirements for contracts under the PTRs, many travel agents and tour operators belong to trade associations, e.g. ABTA (the Travel Association), membership of which sometimes requires even more stringent control over what has to be included in C's holiday or travel contract.

If C does not know paragraphs 11, 12 or 13 in table G1(a), advisers should provide information and signpost for further support as per the Quick Reference Tool for Financial Capability

Table G1(a): Information requirements for package travel - contract types 1
- 5

Information types & refs	Brief details	Manner	Timing	Liability
<p>Package details (PCI)</p> <p>r5(1) Schedule 1</p> <p>r5(2)(4)(5)</p>	<ol style="list-style-type: none"> 1. Main characteristics of the travel services specified in bullets 2 - 10 2. Travel destination, itinerary and periods of stay, with dates and where accommodation is included, the number of nights included 3. 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 4. Approximate time of departure and return if not yet determined 5. Location, main features and where applicable, tourist category of the accommodation under the rules of the country of destination 6. Meals which included in the package 7. Visits, excursions or other services included in the total price agreed 8. Where it is not apparent from the context, whether any of the travel services are to be provided as part of a group and, if so, where possible, the approximate size of the group 9. Where C's benefit from other tourist services depends on effective oral communication, the language in which those services are to be carried out 10. Whether the trip or holiday is generally suitable for persons with reduced mobility and, on C's request, the precise information on the suitability of the trip or holiday taking into account C's needs 11. 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 12. Total price, inclusive of taxes and all additional fees, charges and other costs or, if they can't reasonably be calculated in advance, an indication of the type of additional costs C may still have to bear 13. Payment schedule and amount/% 	<p>Clear, comprehensible and prominent</p> <p>Legible if in writing</p>	<p>Before contract is concluded</p>	<p>Failure to provide information in accordance with r5 is a criminal offence</p>

	<p>deposit</p> <p>14. Minimum no. & termination requirements</p> <p>15. General passport, visa and health formalities, including approximate period for obtaining visas</p> <p>16. C's fee paying termination right details</p> <p>17. Information on optional or compulsory insurance to cover cost of termination by C or cost of assistance, including repatriation, in event of accident, illness or death</p>			
Information types & refs	Brief details	Manner	Timing	Liability
<p>Consumer rights (PCI)</p> <p>r5(2)(a)(b) Schedules 2 or 3 - depending on whether hyperlinks are available</p> <p>r5(4)(5)</p>	<p>Part 1 - tells the traveller they:</p> <ul style="list-style-type: none"> • are being offered a package • will benefit from EU package rights • can hold X responsible for performance • get protection for refunds/repatriation in the event of insolvency <p>Part 2 - outlines key PTR18 rights (12)</p> <ul style="list-style-type: none"> • provision of all essential package information before contract conclusion • at least 1 T liable for proper performance • emergency contact for organiser or travel agent • transfer rights • price alteration restrictions • cancellation rights if an essential element is significantly changed before departure • rights to refund and compensation if T cancels the package • cancellation rights before the package starts (subject to a reasonable fee) • cancellation right if exceptional circumstances at the destination or its immediate vicinity, affecting transport there • suitable alternative arrangements to be offered if significant elements of the package can't be provided (no extra cost) • free termination right if non performance substantially affects the package and the organiser fails to sort the problem out • price reduction/compensation available for non or improper performance • assistance by the organiser when C is in difficulty • refunds and repatriation on insolvency in certain circumstances <p>Part 3 - where to find the PTR18</p> <ul style="list-style-type: none"> • a hyperlink to the PTR18 • or the web address 	<p>Clear, comprehensible and prominent</p> <p>Legible if in writing</p> <p>Form and wording as per relevant Schedule</p>	<p>Before contract is concluded</p>	<p>Failure to provide information in accordance with r5 is a criminal offence</p>

<p>Binding nature</p> <p>r6 Schedule 1</p>	<p>Package details provided as part of the PCI:</p> <ul style="list-style-type: none"> • form an integral part of the package contract, and • can only be changed with the express agreement of C <p>This applies to:</p> <ul style="list-style-type: none"> • information in row 1 above [Schedule 1, paras (1) - (10), (12 - (14) and (16)] • so NOT details about the T, insurance or passport, visa and health formalities 	<p>Any change to these package details must be communicated in a clear, comprehensible and prominent manner</p>	<p>Before contract conclusion</p>	<p>Implied condition to comply</p> <p>C does not have to pay extra fees, charges or other costs not provided in the PCI in accordance with Schedule 1, paragraph 12</p>
<p>Information types & refs</p>	<p>Brief details</p>	<p>Manner</p>	<p>Timing</p>	<p>Liability</p>
<p>Contract content</p> <p>r7(1)-(5) Schedule 1 (package PCI) Schedule 5 (additional information) r7(8) (10)-(12)</p>	<p>The contract must set out the full content of the package and include:</p> <ul style="list-style-type: none"> • package details PCI • additional information listed below <p>Additional information required:</p> <ul style="list-style-type: none"> • C's special requirements agreed by the organiser • organiser's obligations about liability for performance and assistance • details of insolvency protection body • competent authority details • local representative details or other contact point • C's duty to let the organiser know about problems asap • contact details for unaccompanied minors if accommodation included • complaint handling procedures and ADR mechanisms & entity • right to transfer details 	<p>Copy of the contract or confirmation of it on a DM</p> <p>Paper copy if F2F and C requests it</p> <p>Paper copy if Off-P contract or other DM if C agrees</p> <p>Plain and intelligible language</p> <p>Legible if in writing</p> <p>Clear, comprehensible and prominent</p>	<p>When the contract is concluded or without undue delay after its conclusion</p>	<p>Implied condition to comply with manner provisions (except the last one)</p> <p>Failure to ensure the contract contains all the information in Schedules 1 & 5 is a criminal offence</p> <p>Providing information that is not clear, comprehensible or prominent is a criminal offence</p>

		t		
Before the package starts r7(9)	C must be provided with: <ul style="list-style-type: none"> ● necessary receipts ● vouchers ● tickets ● scheduled times of departure ● deadline for check-in ● scheduled times for intermediate stops, transport connections and arrival 	None	In good time before the package starts	Implied condition to comply No criminal offences

Table G1(b): Information requirements for package travel - contract type 6

Information types & refs	Brief details	Manner	Timing	Liability
Package details (PCI) r5(1)(3) Schedule 1	Same as for package types 1 - 5	Clear, comprehensible and prominent Legible if in writing	Before C is bound by a package At the same time as C's rights details	Failure to provide information in accordance with r5 is a criminal offence Both Ts must provide whatever elements of the package details apply to their element
Consumer rights (PCI) r5(3) Schedule 4	Part 1 - tells the traveller <ul style="list-style-type: none"> • they will have a package if they make a contract with X within 24hrs of receiving confirmation of their contract with Y • if so, they will benefit from EU package rights • who will be responsible for proper package performance (1st T who transferred data to T2) • protection will be in place (by 1st T) for refunds/repatriation in the event of insolvency Parts 2 & 3 - same as for package types 1 - 5	Clear, comprehensible and prominent Legible if in writing Form and wording as per relevant Schedule	Before C is bound by a package At the same time as the package details	Failure to provide information in accordance with r5 is a criminal offence
Binding nature	All details the same as for package types 1 - 5			
Contract r7(6)(7)(12) Schedule 5	Details are the same as for packages 1 - 5	Durable medium Clear, comprehensible and prominent	As soon as the organiser is informed that a package has been created	T2 to whom data is transferred must inform T1 that a contract has been concluded which has led to the creation of a package Must also provide the information necessary for T1 to comply with their obligations Failure to provide the information on a DM or providing

				information that is not clear, comprehensible or prominent - are criminal offences
Before departure	All details the same as for package types 1 - 5			

G2.4.2 Pre-departure changes

Pre-departure changes may be made by either C or the organiser and both parties will have certain rights and obligations, depending on the circumstances. The nature of the change, who is making it and what provisions apply are detailed in the 2 tables below.

Table G1(c) covers changes made by the organiser:

- price alterations [r10]
- significant changes [r11]
- other changes [r11(2)]
- cancellation of the package [r13]

Table G1(d) covers changes made by C:

- transfer rights [r9]
- change of mind [r12(2) - (6)]
- cancellation in exceptional circumstances [r12(7) & (8)]

Table G1(c): Pre-departure changes - by the organiser

(1) Price alterations	
Relevant factors	Remedies
<p>The organiser can only alter the price for one of these reasons:</p> <ul style="list-style-type: none"> • transport costs, including fuel • exchange rates • taxes, or fees such as landing taxes, embarkation and disembarkation fees, imposed by 3rd parties <p>Variation clause:</p> <ul style="list-style-type: none"> • there has to be a clause in the T&C to say the price may change in these circumstances • it must allow for price decreases as well as increases • it must state what administrative charges can be deducted from any 	<p>Permitted price increases over 8%</p> <ul style="list-style-type: none"> • C's options are to: <ul style="list-style-type: none"> ◦ accept the charge and pay it ◦ choose a substitute package if one was offered ◦ end the contract for a full free refund (14 days) • C must inform the organiser in a reasonable time of cancellation in writing (BOP on C) • C should read the T&Cs, or notification, to check how this should be done and the time limits • C should note consequences of not responding to organiser with decision • the right to end the contract for a free

<p>refund due to price decreases (and proof must be available on request)</p> <p>The organiser's notification must:</p> <ul style="list-style-type: none"> • give 20 days notice • be on a durable medium • be clear, comprehensible and prominent • justify the alteration • include a calculation • state a reasonable timescale for C to notify the organiser of their decision • if available, offer a substitute package, for same price or price reduction if lower quality • outline the consequences if C doesn't notify organiser <p><u>If C doesn't respond to proposed permitted price increase:</u></p> <ul style="list-style-type: none"> • organiser must notify of the same details for a 2nd time • if C fails to respond to 2nd notification • organiser can terminate and refund within 14 days 	<p>full refund should be explained in the relevant SIF</p> <p><u>Additional compensation is unlikely as such price increases are all imposed by third parties and likely to satisfy the unavoidable test</u></p> <p>Non-permitted price increases or permitted ones of 8% or below</p> <p>C's should state that:</p> <ul style="list-style-type: none"> • the price increase is not permitted • they agreed the package price when the contract was concluded • the organiser should honour the price agreed
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(2) Significant change by the organiser

Relevant factors	Remedies
<p>To any special requirements requested by the C, and agreed by the organiser, that have been noted in the contract</p> <p>OR</p> <p>Where the organiser is constrained by circumstances beyond his control to make a significant (not defined) change to any of the main characteristics:</p> <ul style="list-style-type: none"> • travel destination, itinerary and periods of stay, with dates and where accommodation is included, the number of nights included • transport details including intermediate stops and connections • approximate time of departure and return if exact ones not yet determined • location, main feature and destination • tourist category of the accommodation • the meals which are included in the package 	<p><u>C's options:</u></p> <ul style="list-style-type: none"> • C has 3 options: <ul style="list-style-type: none"> ◦ accept changes ◦ choose a substitute package if one is available - check with organiser ◦ end contract for free for a full refund (14 days) • C must inform the organiser in a reasonable time of cancellation in writing (BOP on C) • C should read the T&Cs, or notification, to check how this should be done and the time limits • C should note consequences of not responding to organiser with decision • the right to end the contract for a free full refund should be explained in the relevant SIF <p><u>Compensation:</u></p> <p>C could also claim an appropriate level of</p>

<ul style="list-style-type: none"> visits, excursions or other services included whether any travel services to be provided as part of a group and if so approximate size where the benefit of any other tourist services depends on effective oral communication, the language they will be in reduced mobility suitability <p><u>Organiser must:</u></p> <ul style="list-style-type: none"> have a variation clause in the T&C inform C of changes without undue delay in a clear and comprehensible prominent manner in a durable medium outline the proposed changes and impact on price (if there is one) outline a reasonable timescale for C to notify the organiser of their decision offer a substitute package, if available, for same price or price reduction if lower quality package offered explain the consequences if C doesn't notify the organiser <p><u>If C doesn't respond to proposed change:</u></p> <ul style="list-style-type: none"> organiser must notify of the same details for a 2nd time if C fails to respond to 2nd notification organiser can terminate and refund within 14 days 	<p>compensation UNLESS:</p> <ul style="list-style-type: none"> C accepts the changes the alteration was caused by C the alteration was caused by an unconnected 3rd party and is unforeseeable or unavoidable the alteration is due to unavoidable and extraordinary circumstance <p><u>Unavoidable and extraordinary circumstances:</u></p> <p>These are circumstances beyond the control of the organiser where the consequences could not have been avoided even if all reasonable measures had been taken, e.g. warfare, terrorism, outbreak of a serious disease or a natural disaster making it impossible to travel.</p> <p>A compensation claim can be limited by any international convention which allows it, however, it cannot be limited for:</p> <ul style="list-style-type: none"> personal injury caused intentionally or with negligence damage caused intentionally or with negligence less than 3x the total package price
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(3) Any other change by the organiser

Relevant factors	Remedies
<p>Organiser makes any other change to the package holiday contract. This could include hotel facilities not being available</p>	<p>C would not have grounds to terminate the holiday but may be able to claim an appropriate amount of damages if loss is suffered</p> <p>Exclusion and limitation clauses should be checked</p>

(4) Cancellation of the package by the organiser

Relevant factors	Remedies
<p>The organiser will be able to cancel without paying compensation if:</p> <ul style="list-style-type: none"> the minimum number of people required for travel was not met and the minimum notice was given (see below) (requirements have to be outlined in the T&C) <p>OR</p> <ul style="list-style-type: none"> unavoidable and extraordinary circumstances prevented the organiser from performing the contract AND C was notified without due delay and before the package started <p>OR</p> <ul style="list-style-type: none"> C was unresponsive after being properly notified twice (see (1) and (2) above) about 1 of the following: <ul style="list-style-type: none"> an 8%+ permitted price increase a necessary significant alteration to a main characteristic an inability to fulfil C's agreed special requirements 	<p>Organiser must provide refunds within 14 days</p> <p><u>Minimum notice periods if insufficient travellers:</u></p> <p>Trip length: Less than 2 days - 48hrs notice 2-6 days - 7 days notice 6+ days - 20 days notice</p> <p><u>Unavoidable and extraordinary circumstances:</u> These are circumstances beyond the control of the organiser where the consequences could not have been avoided even if all reasonable measures had been taken, e.g. warfare, terrorism, outbreak of a serious disease or a natural disaster making it impossible to travel</p> <p><u>Compensation:</u> If the organiser cancels for any other reason the C may be able to claim damages under common law including loss of enjoyment. Check T&C for exclusion and limitation clauses</p>

Table G1(d): Pre-departure changes - by the traveller

(1) C wants to transfer the holiday to someone else	
Relevant factors	Remedies
<ul style="list-style-type: none"> new traveller (transferee) must satisfy conditions of package e.g 18-30 yrs C must give reasonable notice to the organiser e.g. 7 days before departure that they want to transfer organiser must specify if more than 7 days notice is needed in T&Cs e.g.changing flight details C must inform organiser by a durable medium C and transferee are equally liable for transfer costs * 	<ul style="list-style-type: none"> C and transferee are equally liable for transfer costs * only actual costs incurred for the transfer can be charged costs must be reasonable & the organiser must inform C of them organiser must provide proof of additional fees, charges or other costs arising out of the transfer the right to transfer should be in the: <ul style="list-style-type: none"> relevant SIF contract or confirmation refer to TSS if right to transfer not clear, comprehensible or prominent

	in the contract
(2) C wants to cancel the holiday	
Relevant factors	Remedies
<ul style="list-style-type: none"> • C has the right to cancel the package at any time before the package starts • however, the organiser can charge an appropriate and justifiable fee • the fee should be in the T&Cs and the traveller can request justification of the charges • the organiser may choose to have a standardised charge based on the notice provided by the traveller and expected cost savings and income from redeployment of the travel service 	<ul style="list-style-type: none"> • payments will be refunded minus the termination fee • the organiser must provide justification for the fee if requested • it may be possible to challenge a high fee as an unfair term or unfair commercial practice • refund should be given within 14 days • the right to cancel should be in the: <ul style="list-style-type: none"> ◦ PCI package description ◦ the relevant SIF ◦ contract or confirmation • refer to TSS if right to transfer not clear, comprehensible or prominent in the contract • C may be covered for change of mind by their travel insurance
(3) C is worried about exceptional circumstances in the destination	
Relevant factors	Remedies
<p>If there are unavoidable and extraordinary circumstances:</p> <ul style="list-style-type: none"> • occurring at the destination <p>OR</p> <ul style="list-style-type: none"> • in its immediate vicinity <p>AND</p> <ul style="list-style-type: none"> • they significantly affect package performance <p>OR</p> <ul style="list-style-type: none"> • significantly affect C's travel to the destination <p><u>Unavoidable and extraordinary circumstances:</u> These are circumstances beyond the control of the organiser where the consequences could not have been avoided even if all reasonable measures had been taken, e.g. warfare, terrorism, outbreak of a serious disease or a natural disaster making it impossible to travel</p>	<ul style="list-style-type: none"> • C can cancel with no fee • C should receive a full refund but no additional compensation • C may be covered by their travel insurance • cases will need to be looked at individually as C's personal circumstances may be a relevant factor e.g. pregnant woman not wanting to travel to an area where there is a Zika virus outbreak • this right to cancel in exceptional circumstances should be explained in the relevant SIF given as part of the PCI • organisers are likely to rely on the information provided by the Foreign and commonwealth Office which can be found on GOV.UK • C will have the burden of proof if they wish to cancel for reasons of exceptional circumstances and will have to show that package performance would be significantly

	affected
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* The BEIS Guidance and the Package Travel Directive also state that C has joint and several liability for the balance of the payment, although the PTR18 do not refer to this

G2.4.3 Performance of the package [r15]

Problems with a package holiday often occur once the holiday has started and liability for the performance of the package lies with the organiser, regardless of who is actually providing each travel service, e.g. an airline for the flight. Liability is strict so C does not have to show any fault on the part of the organiser for liability to arise.

Liability is for any damage suffered by C, including disappointment (*Simone Leitner v TUI Deutschland GmbH & Co KG*), as a result of a failure to perform or improper performance. Proper performance of the contract may include performance to a standard that is lower than that expected in the UK (*Logue v Flying Colours Ltd, Wilson v Best Travel Ltd*).

UK established retailers, e.g. travel agents, selling or offering packages combined by organisers outside the EEA must take on responsibility for the performance of the package if they are unable to show that the organiser already complies [r27].

A flow diagram of the remedies available and how they operate, can be found in Figure G2.

Due to the large increase in holiday sickness claims and a number of fraudulent claims being made against tour operators, there is now a Pre-action Protocol which claimants have to follow if they make such a claim through the courts. The activities of Claims Management Companies, seeking to represent Cs in such claims is also now more strictly regulated.

If C is alleging that something has gone wrong with their package holiday, then they will have the burden of proof in relation to that. The burden may shift to the organiser if they are arguing that a particular remedy is not appropriate, e.g. why compensation should not be paid for one of the listed reasons.

G2.4.3.1 Making a complaint

C must let the organiser know asap if there is a problem while they are on the holiday [r15(3)], e.g. something is wrong with their room, an excursion that formed part of the package is cancelled, the hotel is not as described, there are extensive noisy building works going on around the accommodation etc.

This obligation should be stated in the T&C of the contract, which should also contain the name, address, telephone number, email address and, where applicable the fax number of one of the following [r7(2)(b), Schedule 5, paras 4 & 5]:

- the organiser's local representative
- a contact point or
- another service

that allows C to contact the organiser quickly and communicate with them efficiently to:

- ask for help when C is in difficulty
- complain about a problem with the package holiday

If C booked using a travel agent, then they should be able to address messages, requests or complaints about performance to that travel agent, who is under a responsibility to forward them to the organiser without undue delay [r17].

From the point of view of whether time limits or limitation periods have been met, it is assumed that receipt by a travel agent is the same as receipt by the organiser [r17(4)].

G2.4.3.2 General lack of conformity

The first step would always be for C to approach the relevant contact as the organiser should be given the opportunity to sort issues out. If this doesn't resolve the matter what happens next depends on:

- how serious the problem is
- the reason why it is not sorted out

Price reduction - where it is impossible or disproportionately costly for the organiser to sort the problem out within a reasonable time period set by C, then the organiser should offer C an appropriate price reduction as per table G1(e) [r15(4)(5) & r16(2)].

Compensation - in addition, and if appropriate, the organiser should also offer compensation as per table G1(e) [r16(3)].

Obligation to provide assistance - if C is in difficulty, the organiser must provide appropriate assistance as per table G1(e) [r18]

Self remedy - if the organiser refuses to remedy the lack of conformity or an immediate remedy is required, then C can sort the matter out and claim necessary expenses by way of reimbursement from the organiser [r15(6) & (7)], e.g. due to the delay of a bus provided by the organiser, C has to take a taxi to the airport to ensure catching the flight on time.

Table G1(e): General remedies for non or improper performance - price reductions, compensation and assistance

Remedy	Relevant Criteria
Assistance	<p>If C is in difficulty, the organiser must provide appropriate assistance without undue delay, in particular by:</p> <ul style="list-style-type: none"> • providing appropriate information on health services, local authorities and consular assistance; and • assisting C to make distance communications, e.g. phone calls, texts or emails • helping C to find alternative travel arrangements <p>A reasonable fee to cover actual costs incurred can be charged if the difficulty C in in, was caused intentionally by C or through C's negligence</p>
Price reduction	<ul style="list-style-type: none"> • should be appropriate to cover the period the problem lasts for • won't be payable if the problem was caused by C
Compensation	<ul style="list-style-type: none"> • should be offered, without undue delay, • to cover any damage C sustains as a result of the problem, • can include loss of enjoyment if applicable <p>Compensation will not be payable if the organiser is able to prove that the lack of conformity is attributable to one of the following:</p> <ul style="list-style-type: none"> • the traveller • an unconnected third party where the issue was also either unforeseeable or unavoidable • unavoidable and extraordinary circumstances (see below) <p>Compensation can be limited by any international convention (see table G5 in section G4.2) which allows it, however, it cannot be limited for:</p> <ul style="list-style-type: none"> • personal injury caused intentionally or with negligence • damage caused intentionally or with negligence • less than 3x the total package price <p>So other damage can be limited providing this is not unreasonable (<i>Lathorpe v Kuoni Travel Ltd</i>)</p>
<p><u>Unavoidable and extraordinary circumstances:</u> are circumstances beyond the control of the organiser where the consequences could not have been avoided even if all reasonable measures had been taken, e.g. warfare, terrorism, outbreak of a serious disease or a natural disaster making it impossible to travel</p>	

G2.4.3.3 If a significant part of the package cannot be performed [r15(8)(9)(10)(12)(13)]

The organiser must offer suitable alternative arrangements, at no extra cost to C, where there is an inability to provide a significant proportion of the travel services agreed in the package. The alternative should be of equivalent or higher quality, and if a lower quality arrangement has to be offered, it should be accompanied by an appropriate price reduction.

C can only reject the alternative arrangements offered if:

- they are not comparable to what was agreed in the package; OR
- the price reduction is inadequate

Following such a rejection, or if the organiser is unable to make suitable alternative arrangements, C may be entitled to a price reduction and or compensation per table G1(e) above [r16].

Repatriation, using equivalent transport, must also be arranged by the organiser if the package includes transport [r15(13)].

Where the lack of conformity substantially affects the performance and the organiser does not sort the matter out within a reasonable time, C may have the right to terminate (see below).

G2.4.3.4 If performance is substantially affected by a lack of conformity [r15(11)(13)]

Where the lack of conformity substantially affects the performance and the organiser does not sort the matter out within a reasonable time, C may:

- terminate the package contract, without paying a fee; AND
- seek a price reduction, if appropriate, AND [table G1(e)]
- claim compensation for damages, if appropriate [table G1(e)]

Repatriation, using equivalent transport, must also be arranged by the organiser if the package includes transport [r15(13)].

G2.4.3.5 If C is prevented from returning home as agreed [r15(14)(15)(16), r2(1)]

If the organiser is unable to ensure C's return as agreed in the package contract because of unavoidable and extraordinary circumstances (see table G1(e)), the organiser must, in addition to getting them home eventually by some means, bear the cost of necessary accommodation for a maximum of 3 nights per traveller, if possible of equivalent category. This is likely to be, for example, to cover scenarios like the Icelandic volcanic ash situation in 2012, when planes were unable to fly for a significant period of time across a wide variety of destinations.

The limitation of 3 nights does not apply to the following:

- where a different period is specified in relevant Union passenger rights legislation, e.g. there is no limitation on the number of nights accommodation when air travel is disrupted (see section G4)
- people with reduced mobility when travelling by air
- anyone accompanying people with reduced mobility when travelling by air
- pregnant women
- unaccompanied minors
- persons in need of specific medical assistance, if the organiser has been notified of their particular needs at least 48 hours before the start of the package*

The organiser cannot limit this liability if the transport provider would not be able to do so under the relevant Union passenger rights legislation.

A “person with reduced mobility” means “any person whose mobility when using transport is reduced due to any:

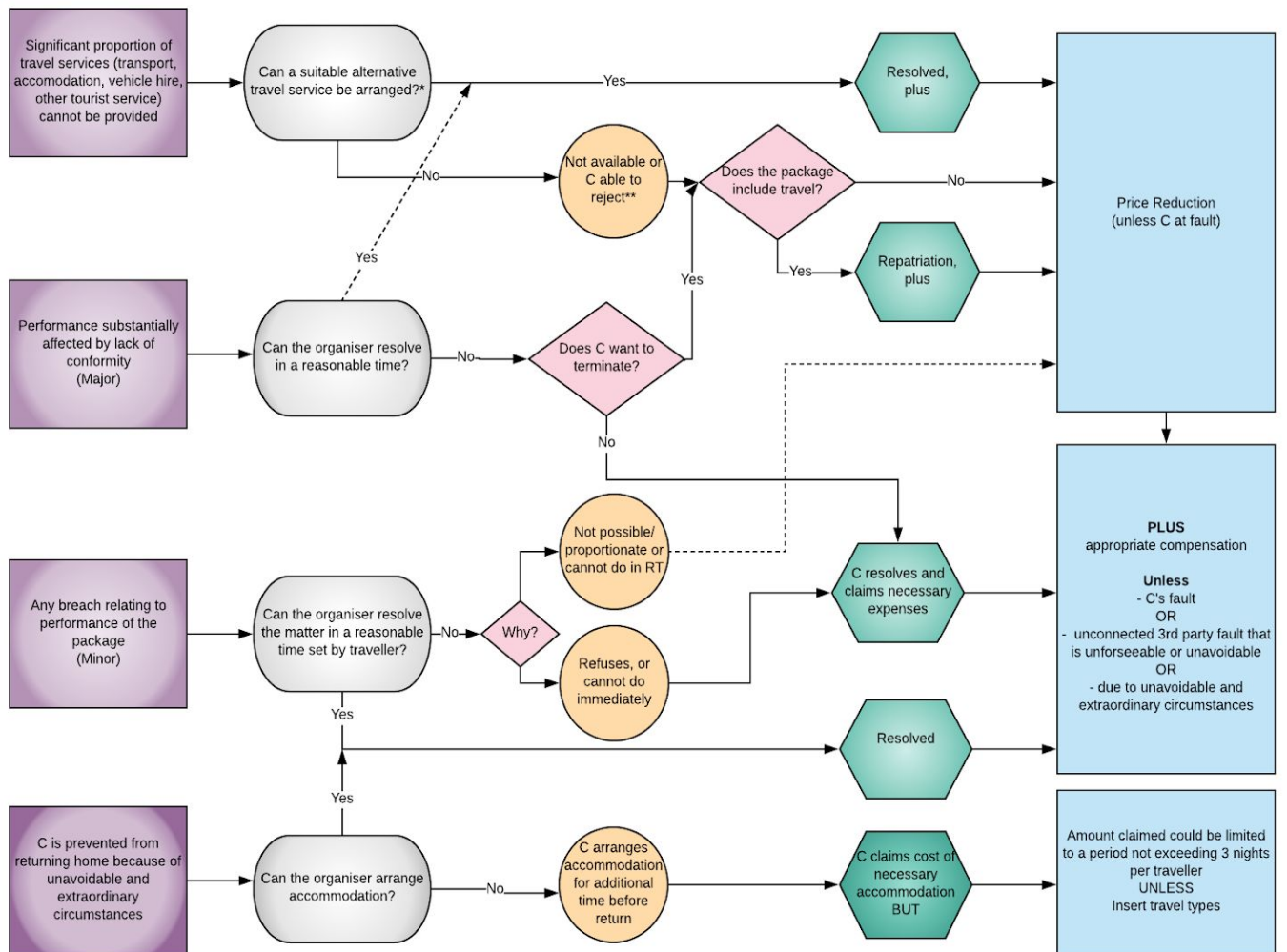
- physical disability (sensory or locomotor, permanent or temporary)
- intellectual disability or impairment
- any other cause of disability, or age,

and whose situation needs appropriate attention and the adaptation to his or her particular needs of the service made available to all passengers” [Regulation (EC) No 1107/2006, Article 2(a)]

The PTR18 specifically draw attention to the organiser’s duty to provide assistance in such situations [r18(2)] as per table G1(e).

* It is not clear in the wording of the PTR18 or the Directive whether the 48 hr notice is required for just this category of traveller or also the 4 bullets above it. Clarification from BEIS is being sought.

Figure G2: Remedies available for improper or non-performance of a package



* suitable alternative should be same quality or higher, at no extra cost. If a lower quality travel service is offered there should be an appropriate price reduction

** reasons for rejection by traveller - not comparable to original package or inadequate price reduction

The organiser is responsible for the performance of the package regardless of who is providing individual travel services. The traveller must inform the organiser as soon as possible about any lack of conformity.

Summary

- EU law protects those who make **package holiday arrangements within the remit of the PTR18**, which **define packages** and determine when **liability** for them arises for organisers and in some instances lay down specific **remedies** for breaches to work alongside traditional common law ones.
- A package is a **combination** of at least two from a list of four travel services, namely, transport, accommodation, vehicle hire and other tourist service providing it is not intrinsically part of any of the other three and forms a significant proportion, combined in any of 6 different ways, including certain click-through online bookings.
- **All travellers** are protected by the provisions and are defined as anyone **seeking to conclude a contract or entitled to travel** on the basis of a contract concluded within the scope of the PTR18, which will include those on whose behalf the package has been booked and also someone to whom the package has been transferred.
- **Retailers offer to sell packages**, put together by **organisers, who, as traders, actually put such packages together** even though they may also sell them, either directly or through another trader and can include a trader who transmits C's details from one trader to another to form an online click-through package combination; travel agents and tour operators are the most common examples respectively, with the latter incurring most of the liability under the Regulations, although the relevant parties can decide who is responsible for complying with the information providing duties.
- A new category of travel was introduced by the PTR18 to cover combinations falling between a package and independent travel, called **linked travel arrangements (LTAs)** and the **2 types** are defined as at least 2 different types of travel service for the same trip, which is not a package, but results in **separate contracts with the individual providers facilitated by a trader**, either through the same point of sale/visit or by C being targeted to buy the second travel service within 24 hours of the first.
- **Some packages and LTAs are exempt** from the provisions in the PTR18, namely arrangements: covering a period of 24 hours or less unless there is an overnight stay; made occasionally on a not-for-profit basis when for a limited group of travellers; bought on the basis of a general agreement concluded between two traders for the purposes of booking travel arrangements in connection with the trade customer.
- **Liability arises in respect of the content, accuracy and manner in which information is provided to travellers about packages**, in that: it should not be misleading; certain information should be supplied, some of it in a standardised format, to meet specific timescales and in certain formats; the pre-contract, contract formation and pre-departure stages determine what details should be provided, and also how and when and what liability arises, covering amongst other things, the main characteristics of the package, key consumer rights, insolvency protection information, prices and

payments, trader details, how to access the PTR18, any special requirements agreed with C, complaint procedures, tickets and travel timing details.

- If the organiser has to make a **significant alteration to any of the main characteristics of the travel services**, due to circumstances beyond his control, or **cannot fulfil agreed special requirements written into the contract**, C must be allowed to withdraw for free from the contract for a full 14 day refund, be offered a substitute if available or accept the change, and must inform the organiser of their decision within the reasonable time period laid out in the notification received detailing the changes and consequences; compensation may also be payable in certain circumstances; failure to inform the organiser of their decision after being properly notified a second time may result in the organiser cancelling the package.
- The organiser's T&C should contain a **variation clause** to enable significant alterations and other changes to be made and exclusion/limitation clauses may restrict any damage claims C may make; the organiser can pass on **permitted price increases over 8%** for transport costs, exchange rates and 3rd party taxes or fees, providing **compliant 20 days notice** is given and C is given the **same options as for significant alterations**.
- In addition to those outlined above the **package can be cancelled by the organiser** for a full 14 day refund but no compensation in 2 further sets of circumstances: the **minimum number of people required for travel was not met** and the relevant notice was given, which is dependent on the length of the trip; **unavoidable and extraordinary circumstances** prevented the organiser from performing the package and C was notified without undue delay and before it started.
- **C has certain rights** in relation to making certain **pre-departure changes**, namely, in relation to: **transferring the package** to someone else, for a reasonable fee, who meets the criteria and with whom there will be joint and several liability; **cancelling** the package at any time for a **justified and reasonable termination fee** and a 14 day refund, and **free cancellation**, but no compensation, if there are **unavoidable and extraordinary circumstances occurring at the destination, or in its immediate vicinity**, which significantly affect the performance of the package or travel to the destination.
- The organiser is liable to C for the **proper performance of the package**, regardless of whether any third parties are responsible for the actual supply of a specific travel service, and C is obliged to communicate any problems asap, although this can be done via a travel agent; various remedies apply depending on the nature of the problem, its seriousness and the whether the matter is sorted out or not and what the reason for this is, with the organiser having a duty to provide appropriate assistance if C is in difficulty.
- When there is the potential to claim an appropriate level of **compensation** this will **not apply if** lack of conformity is attributable to: the traveller; an unconnected 3rd party and is unforeseeable or unavoidable, or if there are unavoidable and extraordinary circumstances; **limitation clauses are permitted** in accordance with international

conventions, however, **compensation cannot be limited** to less than 3x the total package price, or for personal injury or damage caused intentionally or negligently.

- **Unavoidable and extraordinary circumstances** are circumstances beyond the control of the organiser where the consequences could not have been avoided even if all reasonable measures had been taken, e.g. warfare, terrorism, outbreak of a serious disease or a natural disaster making it impossible to travel.

G3 Protection against insolvency

Companies becoming insolvent and ceasing to trade can be a particular problem in the holiday industry because Cs pay for their arrangements in advance and may be abroad when such an event occurs. There are various provisions in place to provide security for some travellers, e.g.

- under the PTRs
- through the Air Travel Organiser's Licence (ATOL) scheme requirements
- possibly by using C's payment method (unit F)

What protection is required will depend on whether C has booked a package or an LTA. The insolvency protection necessary is as follows:

Packages:

- to refund potential travellers who have paid upfront
- to repatriate actual holidaymakers

LTAs:

- to refund payments that facilitators have received from Cs, but only to the extent that a travel service is not provided due to their insolvency
- for repatriation only where the facilitator is responsible for the transport element, e.g. an airline, coach operator or rail company

How these provisions work and how they apply in a practical way will be explained in the following sections, including what information should be provided to C.

Non-UK companies

UK based traders will have to comply with the UK provisions as outlined below. Organisers established in other EEA countries will have to comply with that country's insolvency protection regime, which also have to cover repatriation and refunds for packages and the more limited requirements for LTAs, however, they may do so in different ways. This will affect UK Cs buying from travel organisers established outside the UK but within the EEA.

Traders established outside the UK/EEA will have to comply with the UK insolvency regime if they are selling or offering packages in, or directing such activities to, the UK. However, if C is sold a package or LTA outside the EEA, this insolvency regime will not apply.

In addition, UK established retailers, e.g. travel agents, selling or offering packages combined by organisers outside the EEA must take on responsibility for providing insolvency cover if they are unable to show that the organiser already complies [r27].

Central contact points have to be set up in each EEA state to help facilitate administrative cooperation and supervision of organisers operating across the different states with different insolvency protection schemes. In the UK it is the Civil Aviation Authority (CAA). The CCA will report non-flight insolvencies to BEIS. Cs booking with companies based abroad will notice in their documentation that a different central contact point is listed, depending on where the company they booked with is based.

Criminal offences

The following are criminal offences in relation to insolvency protection requirements and suspected breaches should be referred to the relevant TSs in accordance with the appropriate protocol:

- failing to set up compliant insolvency protection arrangements for packages [r19(9)]

- obtaining release of money held on trust for insolvency protection cover by making a false statement [r25]
- failing to set up compliant insolvency protection arrangements for LTAs [r26(10)]
- failing to provide appropriate information about LTAs [r26(10)]
- failing to provide appropriate information about packages [r5(5), r7(12)]

G3.1 Flight packages

Insolvency protection for packages containing a flight has to be through ATOL if the packages are being sold in the UK. The scheme is run by the [CAA](#) and is funded by travel company contributions, at a rate of £2.50 for every person who is booked on a holiday. The resulting fund is used to ensure Cs can finish their holidays, when the company becomes insolvent, or get a refund of the money they have paid upfront if they haven't yet travelled.

The £2.50 is not an individual charge or tax or an insurance premium, as it is not the holiday makers who have to pay it but the travel companies, who sometimes indicate it separately on receipts and invoices, often referred to as APC, which stands for ATOL protection contribution.

C should be informed about certain details about the insolvency protection provisions in the:

- relevant SIF covering consumer rights [schedule 2, 3 or 4, Part 1 para 3, Part 2 bullet 12) AND
- contract details [schedule 5, para 3]

More details are contained in tables G1(a) and G1(b).

UK, and other EEA established retailers, e.g. travel agents, who sell or offer packages combined by organisers outside the EEA must take on responsibility for providing insolvency cover if they are unable to show that the organiser already complies [r27].

G3.1.1 Application of the ATOL scheme

The Civil Aviation (Air Travel Organisers' Licensing) Regulations 2012 (the ATOL Regs) implement the ATOL scheme, which protects most overseas air holidays that have been booked using a UK travel company. This would, for example, include packages comprised of:

- flights and accommodation, including a cruise
- flights and car hire
- flights, accommodation and car hire
- flights and other tourist services that meet the significant proportion test

The ATOL scheme also covers some flight only bookings:

- where flights are booked, including UK domestic ones, but C does not receive their tickets immediately, e.g.
 - charter flights
 - some discounted scheduled flight
 - where flights are paid for in instalments
- an LTA might include one of these ATOL protected elements

The ATOL scheme does NOT protect the following:

- flights booked direct with scheduled airlines
- flights booked through airline ticket agents
- flights where a valid ticket is received in exchange for payment when bought from an airline or a travel business

C can use the [CAA check an ATOL facility](#) to see if the T they are booking with is part of the ATOL scheme. This page also has a list of tips for C called "Watch out for the following" and a separate list of "Websites to watch out for".

The CAA also maintains a list of the latest ATOL holder failures and publishes up-to-date information and details of how to make a claim.

G3.1.2 ATOL certificates

In addition, C should be issued with an ATOL certificate if the holiday they have booked is protected by the scheme.

An ATOL certificate is proof that the holiday C has booked is protected by the scheme. It must state:

- what is protected
- who is covered
- who is providing the protection (the travel company's name and unique ATOL number)

There are three types of ATOL certificate:

- Package single contract
- Package multi contract - where C has more than one contract for all the travel services that make up the package
- ATOL protected flight only

The CAA website contains [sample ATOL certificates](#) for these three categories.

The ATOL certificate should be given to C as soon as they make any payment, e.g. a deposit

G3.2 Non-flight packages [r17 & r18]

Organisers can choose from 1 of 3 options for insolvency protection for non-flight packages, namely, a bond, insurance or a trust fund. C should be informed [See tables G1(a) and (b) for further details] about certain details relating to the insolvency protection provisions in the:

- relevant SIF covering consumer rights [schedule 2, 3 or 4, Part 1 para 3, Part 2 bullet 12] AND
- contract details [schedule 5, para 3]

UK established retailers, e.g. travel agents, selling or offering packages combined by organisers outside the EEA must take on responsibility for providing insolvency cover if they are unable to show that the organiser already complies [r27].

G3.2.1 Bonding [r20 & 21]

This option is available to Ts who are members of BEIS approved bodies:

- Association of British Travel Agents (ABTA)
- Association of Bonded Travel Organisers Trust (ABTOT)
- Bonded Coach Holidays (BCH)

The bond must last for no more than 18 months and must be at an adequate level to meet insolvency requirements, i.e. the smaller of an amount that:

- covers the maximum amount of payments the organiser expects to hold at one time for those packages yet to be performed; OR
- is less than 25% of all payments the organiser expects to make for packages during the 12 month period from when the bond starts

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Alternatively, if the approved body has a reserve fund or insurance for any shortfall in the bond, then the bond must cover the smallest of:

- the maximum amount of payments the organiser expects to hold at one time for those packages yet to be performed; OR
- no less than 10% of all payments the organiser expects to make for packages during the 12 month period from when the bond starts

For packages where repatriation costs would need to be paid, the bond must include additional sums as the organiser may reasonably expect to cover those costs and any additional accommodation Cs may need before they are repatriated.

G3.2.2 Insurance [r22]

Cs' money can be protected by way of an appropriate insurance policy or policies with an approved insurer, which recognises Cs as the insured persons so that they are paid directly. It is acceptable for administration of claims and repatriation arrangements to be dealt with by the approved body.

Organisers have to ensure that the policies do not become void if they are negligent or in breach of a condition. To this end it is a requirement for ABTA approved underwriters to not reject legitimate claims or withhold payments to Cs on such grounds.

G3.2.3 Trust fund [r23 & 24]

This option works on the basis that all money paid by Cs should be held by an independent trustee until the contract has been fully performed. It is not likely to be a very popular choice for tour operators as they would not be able to use any of the money paid by Cs to pay suppliers. The trustee can only forward the money to the organiser if evidence is produced to the effect that:

- the contract has been fully performed, OR
- the organiser has repaid C a portion of the money, OR
- the money has been forfeited because C has cancelled the holiday

It is a criminal offence for an organiser to make a false statement in relation to any of the above [r25].

The organiser must pay the costs of administering the trust, including administering claims on insolvency and must ensure there are sufficient funds to pay Cs as well as these costs.

If transport is included in the package, additional insurance will be required to cover repatriation and any pre accommodation necessary before it can be arranged. Such insurance must recognise C as the insured person so that they are paid directly if the organiser becomes insolvent.

G3.3 Linked Travel Arrangements [r17 & r18]

The insolvency protection requirements for LTAs are significantly less comprehensive for Cs than for packages and may be of limited duration.

G3.3.1 Definition of an LTA [r2(3)]

LTAAs catch some of the arrangements that fall between a package and independent travel. An LTA is defined as:

At least 2 different types of travel service for the same trip - not a package, but results in separate contracts with the individual providers, where T facilitates this [see G2.3 for exemptions]. The [BEIS Guidance](#) refers to type A and type B as follows:

G3.3.1.1 LTA Type A

C chooses travel services from different providers and has separate contracts and transactions, but through a single visit/contact with the facilitating T's POS.

Example: C visits a travel agent and buys a flight. After paying for the flight and whilst still at the travel agents, C buys accommodation for the same trip and pays for this separately.

There would need to be a clear interruption for there not to be a single visit or contact with the same POS, however, decisions would need to be made on a case-by-case basis.

G3.3.1.2 LTA Type B

C books a travel service with provider 1 and in a targeted manner is directed to provider 2 to buy another travel service for the same trip and the 2nd contract is made within 24hrs after confirmation of the 1st booking.

The requirement for the facilitation to take place in a targeted manner, means that simply providing information or advertising additional travel services will not lead to the creation of an LTA.

Example: C books a flight direct with an airline online and the confirmation email contains an invitation and link to a hotel, which C books within 24hrs.

- If the airline had transferred C's name, payment details and email details to the hotel company for C to make the second booking, the combination would have become a package
- The absence of the transfer of the details means that the combination would be an LTA
- Regardless of whether C's details had been transferred, if the 2nd contract had been made outside the 24hr period, the arrangements would be treated as separate contracts and so C would then be an independent traveller

See Figure G1 to help determine which of the following types of holiday C has arranged when they have booked with more than one provider:

- a package
- an LTA
- independent travel

G3.3.2 Insolvency protection requirements for an LTA [r26]

Facilitators of LTAs only have to provide insolvency protection in relation to their own insolvency, not those of other individual travel service providers. It is important to note that LTAs could be facilitated by travel agents and a wide variety of different types of individual travel services, e.g. :

- High street travel agent
- Online travel agent
- Airline, e.g. British Airways
- Train company, e.g. Eurostar
- Coach operator
- Accommodation provider, e.g. hotel
- Vehicle rental provider, e.g. car hire company
- Tourist service provider, e.g. excursion organiser

The requirements for how insolvency protection arrangements should be made is the same for LTAs as it is for packages. So if there is a relevant ATOL this will suffice, alternatively, bonds, insurance policies or trust funds can be set up by facilitators.

Who the facilitator is, has an effect on the nature and extent of the insolvency protection needed, so insolvency protection could be very limited or even non-existent for some LTAs because of how it has been arranged. Insolvency protection will only be required by facilitators for the following:

Repatriation - only if the facilitator is also responsible for the transport element of the LTA, e.g. because they are an airline, a rail company or a coach operator

- so if the facilitator is a hotel, which creates an LTA by linking to Eurostar, the hotel does not require insolvency protection for repatriation as it is not responsible for the train travel

Refunds - only for the period of time when they hold any of C's money, which could be a very short time or even not at all

- payments made direct by C to a travel provider who is not the facilitator of the LTA do not need to be protected
- if the facilitator does not receive any money from C, then no protection is required
- once the facilitator has passed money on to the travel service provider, it no longer requires insolvency protection

Example (based on the BEIS Guidance): A hotel confirms an online room booking for C and then sends an email containing a targeted link to C inviting them to book several rounds of golf at a golf course unconnected to the hotel. C books the golf option within 24hrs and it forms a significant part of the holiday, thereby making the arrangement an LTA with the hotel acting as facilitator as well as provider of the first travel service.

(1) The hotel received all payments from C and then went into insolvency

C's money should be protected for both the hotel room and the golf arrangement until the hotel passes on the money to the golf club. If the hotel had transferred the relevant money to the golf club, C can still use the golf facility anyway.

(2) The hotel received all payments from C and then the golf club went into insolvency

If the hotel has passed on the money to the golf club then this money will be lost as there is no insolvency protection requirement for travel service providers who do not act as a facilitator of the LTA. The hotel does not require insolvency protection after transferring the money on, only while it is in its possession

- (3) C paid the hotel and golf course directly and separately in case the hotel went into insolvency

The hotel is only required to provide insolvency protection for the payment paid directly to it for the room booking. Despite being the facilitator of the LTA, the hotel is not required to protect the payment for the golf course arrangement as the money was never paid to the hotel. C would not suffer any loss with regards to the golf arrangement as a consequence of the hotel going into insolvency.

G3.3.3 Information requirements for LTAs [r26, Schedules 6 - 10]

Facilitators must provide specific information in prescribed formats to C before they are bound to any contract leading to the creation of an LTA, so that they know they are buying an LTA rather than a package. These standard information forms (SIFs) explain the very limited rights Cs will have in relation to the LTA and the facilitator.

There are 5 different SIFs, depending on whether the facilitator is a transport provider or not, the contract is concluded F2F or not and whether it is a type A or type B LTA (BEIS Guidance classification). The 5 SIFs appear in schedules 6 - 10 of the [PTR18](#) and a brief overview of how they are formatted appears in table G1(g).

The information must be provided in a clear comprehensible and prominent manner. Each SIF is split into 3 parts, which broadly covers the detail outlined in table G1(f).

Table G1(f): Overview of the information to be provided in a SIF for an LTA

PART 1 - General
<ul style="list-style-type: none"> • that C will not benefit from any of the package rights • each service provider will be solely responsible for proper contract performance • how C may benefit from the facilitator's insolvency protection for refunds and repatriation (where applicable) but not in the event of insolvency of the relevant service provider • that more information on insolvency protection is available in a hyperlink (apart from F2F LTAs)
PART 2 - More information on insolvency protection
<p>The following information should be in a hyperlink (unless it was a F2F LTA):</p> <ul style="list-style-type: none"> • company in charge of the insolvency protection • C can contact this company or the competent authority (details to be provided) if services are denied due to the facilitator's insolvency • the insolvency protection does not cover contracts with parties other than the facilitator, which can be performed despite the facilitator's insolvency

PART 3 - The PTR18

- a hyperlink to the PTR18
- a website address where the PTR18 can be found (for F2F contracts)

Table G1(g): The 5 different formats for the SIFs for LTAs

LTA type	Contract criteria	Example (assuming other LTA criteria are met)	Reference
A	Where the facilitator is a carrier selling a return ticket	Airline website allows C to book flight and car hire as separate transactions but during the same visit to the website	Schedule 6
A	Where the facilitator is NOT a carrier selling a return ticket	Online travel agent facilitates C booking a flight and a ski hire and lift pass during the same visit to its website	Schedule 7
A	Where the facilitator concludes the contract F2F (and is not a carrier selling a return ticket)	High street travel agent sells a flight and accommodation as separate transactions but during the same visit	Schedule 8
B	Where the facilitator is a carrier selling a return ticket	Rail company links to accommodation in the confirmation email and C books this within 24 hrs	Schedule 9
B	Where the facilitator is NOT a carrier selling a return ticket	A villa links to motorcycle hire in the confirmation email and C books this within 24 hrs	Schedule 10

If the LTA does not match one of the 5 SIFs then the most suitable one can be amended to provide the relevant information clearly and accurately. There will often be situations where an LTA facilitator will forward money almost immediately to individual travel service providers, and therefore, no insolvency protection would be required and none of the 5 SIFs address this situation. Para 81 of the [BEIS Guidance for businesses](#) suggests some amended wording for this situation, to cover Part 1 of the SIF in schedule 8:

If, after selecting and paying for one travel service, you book additional travel services for your trip or holiday via our company/XY, you will NOT benefit from rights applying to packages under the Package Travel and Linked Travel Arrangements Regulations 2018.

Therefore, our company/XY will not be responsible for the proper performance of those additional travel services. In case of problems please contact the relevant service provider.

However, if you book any additional travel services during the same visit to our company's/XY's booking website, the travel services will become part of a linked travel arrangement.

Please note that, since your payments go directly to the relevant travel service providers, our company/XY has not taken out any protection to refund you, in the unlikely event it becomes insolvent

If C is not sure what they have booked and the paperwork is unclear the case may need referring to TSS if the relevant protocol allows, or C may need to be directed to an LCA.

Summary

- **Insolvency** can be a particular problem in the holiday industry, as Cs pay for their arrangements in advance and may be abroad when such an event occurs, so there are various provisions in place to provide **security for some travellers**, under the **PTR18**, the Air Travel Organiser's Licence (**ATOL**) **scheme requirements** and possibly under **s75 CCA**, to ensure that refunds and repatriation are possible where appropriate for defined packages and to a lesser extent, LTAs.
- Organisers established in EEA countries will have to comply with their country's insolvency protection regime and **traders established outside the UK/EEA will have to comply with the UK requirements** if they are directing their activities to UK Cs; central contact points within each EEA state, the **CAA** in the UK, will **help with administrative cooperation and supervision of organisers operating across the different states** with different insolvency protection schemes.
- There are **various criminal offences** associated with the insolvency protection regime, including ones for TSS referral covering the failure to set up compliant arrangements, obtaining the release of money held on trust by making a false statement and failing to provide appropriate information.
- The **ATOL scheme** has to be used to cover the **air transport element of packages being sold in the UK** funded by travel company contributions of £2.50 per traveller and as soon as they make any payment, C should be provided with **one of 3 certificates** specifying certain information, including whether it covers a flight only or single/multi package.
- **Insolvency cover for LTAs is only required to** refund payments that facilitators have received from Cs, but only to the extent that a travel service is not provided due to their insolvency, and only for repatriation where the facilitator is responsible for the transport element, so insolvency protection could be very limited or even non-existent for some LTAs because of how they have been arranged.
- **Organisers and facilitators** are required to have one of three arrangements in place to provide the required insolvency protection for holiday makers who have booked packages or LTAs defined by the Regulations, namely a **bond, an insurance policy or a trust fund**, and they must meet the relevant criteria to cover refunds and or repatriation as appropriate and to the extent required.
- **Standard information has to be provided to C** at specific times so that C is aware whether they are buying a **package or an LTA** and the **consequences** of that with regard to any **insolvency protection** that has to be in place.

G4 Travel issues

Flights operate on a global basis and similar problems occur throughout Europe and around the world. There are therefore some provisions that address some of the more common issues that arise, such as delays, cancellations, lost luggage and damaged baggage.

G4.1 Delays, cancellations and denied boarding

The Denied Boarding and Cancellation Regulations EC No. 261 / 2004 (The Denied Boarding Regulations), the designated enforcement body for which [a16] is the Civil Aviation Authority [CAA] provide Cs with the right to certain redress in the event of the following in relation to flights, however, the redress differs for each and depends on the applicability of certain criteria [a1]:

- ✓ delays
- ✓ denied boarding
- ✓ cancellation

Clearly visible and legible notices, in prescribed wording, should be displayed at check-ins to inform Cs of their rights [a14].

If you are denied boarding or if your flight is cancelled or delayed for at least 2 hours, ask at the check-in counter or boarding gate for the text stating your rights, particularly with regard to compensation and assistance.

Each C affected must be provided with a written notice (or other appropriate format for blind or visually impaired persons) setting out the relevant rules for compensation and assistance. Written contact details of the relevant national designated body, e.g. the Civil Aviation Authority in the UK, must also be provided [a14].

Liability cannot be excluded or limited and if a term in C's contract purports to do and C subsequently accepts inferior compensation, they can take action to recover the additional amount [a15]. Any compensation or refunds, are payable in cash, electronic bank transfer, bank order, cheque or with C's signed agreement, travel vouchers and or other services [a7(3)]. Claims can be made direct to airlines, or if the flight was part of a package to the tour operator.

G4.1.1 Application of the Denied Boarding Regulations

These rights apply to all flights [a3]:

- ✓ from EU airports on any airline. e.g. a Delta Airways flight from London to New York
- ✓ to EU airports from outside the EU, on an EU airline, e.g. Air France flight from Dubai to Manchester

EU includes all EU member States and also Iceland, Liechtenstein, Norway and Switzerland. It does not matter whether passengers were travelling on a flight as part of a package or not [a3(6)].

Much of what C is entitled to depends on the destination of the flight and its distance. Four categories can be identified as indicated in table G2. The basis for determining flight distance is

the last destination at which the denial of boarding or cancellation will delay C's arrival after the scheduled time and is measured by the "great circle route method" [a7(1) & (4)].

There are 3 categories of redress available for Cs who are denied boarding, cancelled or delayed in relation to their flights, and they depend on various factors, including: the flight distance; the duration of the delay; the reasons for the problem and how much notice, C is given. The three broad categories of redress are:

- compensation [a7]
- refund, return flight or re-routed flight [a8]
- care and assistance [a9]

G4.1.2 Delay

A delay is defined according to the destination and distance categories [a6] as per table G2:

Table G2: Flight delays according to distance and destination

	Distance (metric)	Distance (approx miles)	Recognised delay	Location	Examples
A	1500 km or less	932 miles or less	2 hours or more	Anywhere (short haul)	London to Paris
B	Over 1500 km	Over 932 miles	3 hours or more	Within the EU (medium haul)	Manchester to Athens
C	Over 1500 km and up to 3500 km	Over 932 and up to 2174 miles	3 hours or more	Outside the EU (medium haul)	Amsterdam to Moscow
D	Over 3500 km	Over 2174 miles	4 hours or more	Anywhere but likely to be outside the EU (long haul)	Birmingham to New York

G4.1.2.1 Redress for delays [a6]

For any flight that is delayed beyond its scheduled departure time, over 2, 3 or 4 hours, depending on where it was headed, the airline has an obligation to provide certain care and assistance for C [a9] :

- ✓ meals and drinks (as is reasonable in relation to the waiting time)
- ✓ hotel accommodation (if the delay is overnight)
- ✓ transport to and from the hotel accommodation
- ✓ two free telephone calls or telex/fax messages or emails

Those with reduced mobility, persons or certified dogs accompanying them and unaccompanied children should be given priority and the right to the care listed in a9 as soon as possible [a11].

If the delay is more than 5 hours, C should, in addition, be given the following options [a8(1(a))]:

- ✓ full refund within 7 days (including for parts of the journey not made or no longer required)
- ✓ return flight back at the earliest opportunity
- ✓ re-routed flight, under comparable transport, to the final destination, either:

- o at the earliest opportunity
- o or later at the passenger's convenience, subject to availability

Once C has chosen the refund option, the airline is no longer obliged to provide care and assistance.

4.1.2.2 Compensation for delay

Where the delay is over 3 hours, C may also be entitled to compensation, so for short haul flights passengers should receive care and assistance after a 2 hour delay but not compensation unless they are delayed for a further hour at least. The Denied Boarding Regs do not provide for compensation for delays, however, EU case law in 2012 ruled that compensation should be paid by the airlines for delays over 3 hours (*Nelson v Lufthansa and TUI Travel plc, British Airways plc, easyJet Airline Co. Ltd and the International Air Transport Association v Civil Aviation Authority*). This is represented in table G3.

Table G3: Compensation for delayed flights

	Distance	Location	Examples	Recognised delay	Compensation
A	1500 km or less	Anywhere (short haul)	London to Paris	3 hours or more	€250 * (approx £185)
B	Over 1500 km	Within the EU (medium haul)	Manchester to Athens	3 hours or more	€400 * (approx £295)
C	Over 1500 km and up to 3500 km	Outside the EU (medium haul)	Amsterdam to Moscow	3 hours or more	€400 * (approx £295)
D	Over 3500 km	Anywhere but likely to be outside the EU (long haul)	Birmingham to New York	4 hours or more	€600 * (approx £443)

* If the airline offered C an alternative flight with a similar schedule, the compensation may be reduced by 50%. If the delay was due to unavoidable extraordinary circumstances, compensation will not be payable at all.

G4.1.3 Cancelled flights [a5]

If the airline cancels C's flight then all three categories of redress may apply, subject to the relevant criteria. When C is informed of a cancellation, an explanation must be given concerning possible alternative transport. The BOP is on the air carrier to show that C was informed and when.

G4.1.3.1 Refund or re-route options

The airline should offer C the following options if it is cancelling C's flight [a8(1(a))]:

- ✓ a full refund within 7 days (including for unused flights in the booking, e.g. onward or return flights no longer required)
- ✓ return flight back at the earliest opportunity
- ✓ a replacement or re-routed flight, to the final destination, under comparable transport, either:
 - o at the earliest opportunity
 - o or later at the passenger's convenience, subject to availability

If C is upgraded, no extra payment is payable [a10(1)]. If C is downgraded, a partial refund (within 7 days) is due [a10(2)], of 30%, 50%, 50% or 75% respectively for the four flight categories according to flight distance and destination. However, for downgrading refunds, flights between the EU and the French overseas departments should always attract a 75% refund. If C chooses the refund option, once they have done so, the airline is no longer obliged to provide care and assistance.

G4.1.3.2 Care and assistance

For any flight that is cancelled, the airline has an obligation to provide certain care and assistance for C [a9]:

- ✓ meals and drinks (as is reasonable in relation to any waiting time for a new flight)
- ✓ hotel accommodation (if the new flight is the next day or later)
- ✓ transport to and from the hotel accommodation
- ✓ two free telephone calls or telex/fax messages or emails

Those with reduced mobility, persons or certified dogs accompanying them and unaccompanied children should be given priority and the right to the care listed in a9 as soon as possible [a11].

The obligation to provide this care and assistance prevails even if the cancellation is due to extraordinary circumstances, such as the Icelandic volcano eruption in 2010 (*McDonagh v Ryanair Ltd*)

G4.1.3.3 Compensation

There are circumstances when the compensation in table G3 can be reduced by 50% [a7(2)] and when it is not payable at all [a5]. But EC 261/2004 does not restrict C's rights to pursue further compensation if appropriate [a12].

Compensation will be due in addition to care and assistance and regardless of whether a replacement or return flight is chosen, or a refund under a8 [a5(1)(c) & a5(3)] unless, in relation to the cancellation:

- C is informed at least 2 weeks beforehand
- C is informed between 2 weeks and 7 days beforehand and offered suitable re-routing (departs no more than 2hrs before and arrives less than 4hrs after the scheduled time)
- C is informed less than 7 days beforehand and offered suitable re-routing (departs no more than 1hr before and arrives less than 2hrs after the scheduled time)
- Caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken (BOP on the air carrier), e.g. an industrial strike, severe weather or a security risk

A summary of these points can be found in table G4. Replacement or re-routed flights may leave earlier than original scheduled ones but still arrive later if they take a different route. If the airline offered C an alternative flight with a similar schedule, the compensation may be reduced by 50%.

Table G4: When compensation is and is not due when flights are cancelled

Compensation due	No compensation
C informed within 2 weeks beforehand	C informed over 2 weeks beforehand
C informed of cancellation between 2 weeks and 7 days beforehand, e.g. 10 days before, AND offered a replacement flight that departs over 2hrs earlier than the original one OR arrives over 4 hours later than the original	C informed of cancellation between 2 weeks and 7 days beforehand, e.g. 10 days before, BUT offered a replacement flight that departs 2 hours, or less before the original one OR arrives within 4 hours, or less of the original
C informed of cancellation less than 7 days beforehand AND offered a replacement flight that departs 1 hour, or more later than the original one OR arrives over 2 hours later than the original	C informed of cancellation less than 7 days beforehand BUT offered a replacement flight that departs 1 hour, or less before the original one OR arrives within 2 hours, or less of the original
Cancellation caused by avoidable extraordinary circumstances or circumstances which are not extraordinary, e.g. a technical fault with the plane (<i>Huzar v Jet2.com</i>)	Cancellation caused by unavoidable extraordinary circumstances, e.g. an industrial strike, severe weather or a security risk
BUT depends on flight distance and destination	BUT care and assistance still due
AND there may be a 50% reduction if a replacement flight arrival time is within a certain time frame (2, 3, 3 or 4 hours respectively for the 4 flight categories according to flight distance and destination)	AND refund, return flight or replacement flight options should be given

G4.1.4 Denied boarding

Denied boarding means a refusal to carry a passenger on a flight when they have:

- ✓ presented themselves for boarding
- ✓ received a confirmed reservation
- ✓ arrived within the appropriate time slot (or 45 minutes before the flight if none was stated)

unless there are reasonable health, safety or security grounds to deny boarding or C has inadequate travel documentation [a2(j)]. Airlines have a duty to firstly ask for volunteers to surrender reservations in exchange for benefits before denying boarding to Cs [a4(1)].

The three categories of redress discussed for cancelled flights also apply to those passengers who are denied boarding, i.e. care and assistance, refund or re-route options and compensation. C is not restricted from pursuing further compensation if appropriate unless they voluntarily surrendered a reservation [a12].

If the airline offered C an alternative flight with a similar schedule, the compensation may be reduced by 50%.

G4.2 Luggage problems

There are various International Conventions covering claims that can be made for issues arising over lost or damaged luggage and also personal injury. They sometimes refer to agreed maximum amounts for certain claims which airlines, rail companies etc. can then include in their contracts. Some examples are included in table G5.

Table G5: International travel and holiday conventions

Convention	Scope	Comments
Warsaw Convention 1929	International Carriage by Air	Although its provisions have largely been superseded by the Montreal Convention, it is still relevant in those countries that have not yet adopted the Montreal Convention
Berne Convention 1961 (COTIF)	Carriage by Rail	Covers liability for loss, damage or delay to goods carried. Amended by the Vilnius Protocol in 1999
Paris Convention 1962	Liability of Hotelkeepers for Guest Property	Limits liability for damage, loss or destruction of hotel guest's property to the equivalent of 3000 gold francs
Athens Convention 1974	Carriage by Sea	Provides for carrier liability for death or personal injury to sea passengers and loss or damage to their luggage if caused by the carrier's fault or neglect. Amounts can be limited
Rome Convention 1980	Law Applicable to Contractual Obligations	Lays down the rules concerning how to determine which country's law should apply to a contract
Montreal Convention 1999	International flights	Claims for luggage problems to be made in so many days: 7 for lost or damaged luggage (lost after 21 days) 21 for delayed baggage Carrier liability for death or passenger injuries and destroyed, lost or damaged luggage can be limited as laid down

Summary

- **The Denied Boarding and Cancellation Regulations** EC No. 261 / 2004 provide Cs with the right to certain redress if certain flights are delayed or cancelled or if C is denied boarding, however, the **redress differs for each and depends on the applicability of certain criteria**; clearly visible and legible notices, in prescribed wording, should be displayed at check-ins to inform C's of their rights.
- **Liability cannot be excluded or limited** and if a term in C's contract purports to do so and C subsequently accepts inferior compensation, they can take action to recover the additional amount [a15]. Any compensation or refunds, are payable in cash, electronic bank transfer, bank order, cheque or with C's signed agreement, travel vouchers and or other services.
- These **rights apply to all flights from EU airports on any airline and to EU airports from outside the EU, on an EU airline** and in this context the EU includes all EU member States and also Iceland, Liechtenstein, Norway and Switzerland; it does not matter whether passengers were travelling on a flight as part of a package or not.
- Much of what C is entitled to depends on the destination of the flight and its distance and the **four categories are flights which are 1500km or less, ones over 1500km within the EU, those over 1500km and up to 3500km outside the EU and anything else**, which will cover long haul flights over 3500km.
- There are 3 categories of redress available for Cs who are denied boarding, cancelled or delayed in relation to their flights, and they depend on various factors, including: the flight distance; the duration of the delay; the reasons for the problem and how much notice, C is given. The three broad **categories of redress are: a choice between a refund, return flight or re-routed flight; compensation and also care and assistance**.
- These four categories recognise **2, 3, 3 and 4 hours respectively as a delay** to a flight and **compensation for these delays is €250, €400, €400 and €600**, however, these may be reduced by 50% for cancelled flights and where boarding is denied if the airline offers a similarly scheduled flight.
- The **care and assistance** that has to be provided, includes: **meals and drinks** (as is reasonable in relation to the waiting time); **hotel accommodation** (if the delay is overnight); **transport to and from** the hotel accommodation and **two free telephone calls** or telex/fax messages or emails.
- **Compensation is not payable in relation to cancellation in certain circumstances**: if C is informed at least 2 weeks beforehand; if C is informed less than 2 weeks beforehand and offered suitable re-routing; if the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had

been taken (BOP on the air carrier), e.g. an industrial strike, severe weather or a security risk.

- **Denied boarding means a refusal to carry a passenger on a flight when they have complied with certain criteria**, namely: presented themselves for boarding; received a confirmed reservation and arrived within the appropriate time slot (or 45 minutes before the flight if none was stated), unless there are reasonable health, safety or security grounds to deny boarding or C has inadequate travel documentation, however, airlines have a **duty to ask for volunteers to surrender reservations in exchange for benefits before denying boarding** to Cs.
- The **same three categories of redress that apply to cancelled flights also apply to those passengers who are denied boarding**, i.e. care and assistance, refund or re-route options and compensation and C is not restricted from pursuing further compensation if appropriate unless they voluntarily surrendered a reservation; if the airline offered C an alternative flight with a similar schedule, the compensation may be reduced by 50%.
- Various **international conventions apply to the carriage of passengers and their luggage** using the different methods of transport, air, sea or rail and also their stay in hotels; these often impose liability for death or personal injury to passengers and guests, particularly in the event of neglect but also often permit compensation to be limited to specified amounts.

G5.1 Package holiday contracts pre 01/07/18

Protection for package holiday travellers was found under Package Travel, Package Holidays and Package Tours Regulations 1992 (PTR92).

It has similar protections as PTR18 but there is no concept of a Linked Travel Arrangement and the definition of a package was slightly different.

G5.2 Definition of a package

'package' means the prearranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than 24 hours or includes overnight accommodation:

(a) transport

(b) accommodation

(c) other tourist services not ancillary to transport or accommodation and accounting for a significant

proportion of the package, and

(i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package;

(ii) the fact that a combination is arranged at the request of the consumer and in accordance with his specific instructions (whether modified or not) shall not of itself cause it to be treated as other than prearranged”.

Car, motorcycle or other motor vehicle rental does not form part of the definition of a package under PTR92.

Table G6 - Main provisions of PTR92

Provision	Remedies	Comment
Misleading information in descriptive matter (r4)	Damages	Liability cannot be excluded as this is a statutory duty
Non-compliance with brochure particulars (r6)	Damages	Criminal offence to make available a brochure that is not legible, comprehensible and accurate concerning the price and matters in Schedule 1 (r5)
Non-compliance with contract information requirements (r9)	End the contract, i.e. in effect cancel the package, as these are implied conditions (terms deemed to be material if breached)	Criminal offence to not provide prescribed information appropriately: <ul style="list-style-type: none"> • Before a contract is concluded (r7) • in good time before the start of the journey (r8)
Not allowing C to transfer a booking (r10)	Damages	There is an IT in the contract that C may transfer their booking to someone else if prevented from taking up the package. The following points should be noted:

		<ul style="list-style-type: none"> • 'prevented' is not defined, but government guidelines suggest that this should be due to circumstances beyond C's control and more than a simple change of mind, e.g. illness, death of a close relative or jury service • the transferee must satisfy all the applicable conditions, e.g. be the appropriate age if it is an 18-30 holiday <ul style="list-style-type: none"> • C must give reasonable notice of the transfer (a minimum number of days may be stated in the contract) • the transferor and the transferee will be jointly and severally liable for the balance of the payment and any additional costs incurred by the transfer • there may be an express term in the contract, stipulating that in the event of a transfer, the place must go to someone on the organiser's waiting list (subject to fairness) [CRA s62]. <p>C may decide not to exercise the right to transfer and rely on an insurance policy if they are unable to go on the holiday. TOs sometimes require cancellation fees and this is acceptable providing it is clear in the contract.</p>
Non-conforming price revisions (r11)	Price increase not effective If significant C can withdraw without penalty (r12)	A price variation term is void unless it says how the revised price is to be calculated and it relates to: transport costs including fuel; dues, taxes or

		<p>fees for port or airport services; applicable exchange rates</p> <p>30 day notice also required and absorption of first 2%</p>
<p>Significant alteration to an essential term (r12)</p>	<p>Withdraw without penalty or accept the changes (and any consequential price changes)</p> <p>An alternative package (if available) and price difference if of an inferior quality (r13)</p> <p>A full refund (r13)</p> <p>PLUS damages unless due to unusual and unforeseeable circumstances beyond the TO's control or minimum number not reached and C informed (r13)</p>	<p>There are also ITs requiring organiser to notify C asap and C to notify decisions asap</p> <p>Overbooking is not unusual or unforeseeable</p> <p>The PTR92 do not provide for non significant alterations, or alterations to non-essential terms, so they would be subject to the rules on CL assessment of damages for any breach</p>
<p>Cancellation by the organiser (r13)</p>	<p>An alternative package (if available) + price difference if of an inferior quality</p> <p>A full refund</p> <p>PLUS damages unless due to unusual and unforeseeable circumstances beyond the TO's control or minimum number not reached and C informed</p>	<p>Overbooking is not unusual or unforeseeable</p> <p><i>Hartman v PO Cruises</i></p>
<p>Significant post departure change (r14)</p>	<p>Free suitable alternative arrangements + compensation for price differences, where possible</p> <p>Equivalent transport to departure place or somewhere else agreed by C,</p>	<p><i>Charlson v Warner</i></p>

	<p>where alternative not possible or C rejects this with good reason</p> <p>PLUS damages where appropriate (not defined but probably similar exceptions to r15(c), i.e. not for unusual and unforeseeable circumstances beyond TO's control)</p>	
<p>Failure to perform or improper performance of the contract (r15)</p>	<p>Damages, including for disappointment</p> <p>UNLESS failures are attributable to:</p> <p>the consumer</p> <p>an unconnected third party (and unforeseeable or unavoidable)</p> <p>unusual and unforeseeable circumstances beyond T's control, the consequences of which could not have been avoided even if all due care had been exercised</p> <p>an event, which could not have been foreseen or forestalled, even with all due care</p>	<p>Liability cannot be excluded, but can be restricted in accordance with IN conventions and for non-personal injury if reasonable</p> <p>In all but the first circumstance, there is an obligation to give prompt assistance to C who is in difficulty</p> <p>Prompt efforts to find appropriate solutions must also be made in C complains to T or local rep</p> <p>C's compensation may be reduced if C fails to alert T about the failure where it occurs, if the contract requires C to communicate this</p>

The flowchart - UNit G Flowchart PTR92 remedies summarises the situation for travellers before PTR18 took effect.

The table below summarises the differences between PTR92 and PTR18

Table G7 - Package Travel changes (PTR92 v PTR18 in force 1/7/18)

Topic	Previous requirements (PTR92)	New requirements(2018 PTRs)
<p>Package [a3(2) & 3(1)] [r2(5)(6)]</p>	<p>2 from 3 travel services Pre-arranged Inclusive price</p>	<ul style="list-style-type: none"> ● 2 from 4 travel services (car rental new) ● 1 of 6 combinations ● includes online click-throughs where traveller details (name, email address and payment details) are transferred from 1st trader to 2nd trader and booked within 24hrs ● no longer has to be pre-arranged ● other tourist service element must account for a significant proportion (25%) and represent or be advertised as an essential feature
<p>Linked travel arrangement (LTA)</p>	<p>None</p>	<ul style="list-style-type: none"> ● new category of travel to catch combinations that don't quite meet package definition ● covers online click throughs made within 24 hrs and separate travel agent transactions made during same visit ● there has to be a clear separation of the booking and selection processes, i.e. one booking is fully concluded before the next service is selected for a combination to be an LTA rather than a package ● there is no requirement for one party (the organiser) to be liable for the performance of all the travel services that are part of an LTA ● some pre-contract information (PCI) required so consumer (C) knows booked an LTA not a package and extent of insolvency protection ● limited insolvency protection needed, depends on who facilitator is and how LTA made ● no need to comply with other rights or obligations in the PTRs (but some apply if PCI requirements not met)
<p>Organiser (tour operator) [a3(8)]</p>	<p>No requirement to be a trader (T)</p>	<ul style="list-style-type: none"> ● now has to be a T ● who combines and sells packages directly or through/with another T ● occasional arrangements are exempt if on a

[r2(1), r3]		<p>not-for-profit basis for a limited group of travellers (same for LTAs)</p> <ul style="list-style-type: none"> • B2B packages (and LTAs) are also exempt if bought on the basis of a general agreement • for a click-through package, the organiser is the 1st T who transmits the traveller's details from one T to another
<p>Customers</p> <p>[a3(6)] [r2(1)]</p>	References to a principal contractor, other beneficiary or a transferee	<ul style="list-style-type: none"> • "travellers" are anyone who can make a contract or travel within the scope of the PTRs • so not limited to consumers (C) • but B2B general agreement contracts are exempt
<p>Unavoidable and extraordinary circumstances</p>	Not defined	<ul style="list-style-type: none"> • a situation which is beyond the control of the party seeking to rely on it • and where the consequences of it could not have been avoided, even if all reasonable measures had been taken
<p>No misleading descriptive matter</p> <p>[a14] [r16]</p>	Any descriptive matter supplied to C should not contain any misleading information	<ul style="list-style-type: none"> • no provisions specifically relating to misleading information • the CPRs will apply for both redress and enforcement purposes and can apply to packages and LTAs • an "appropriate price reduction" is available as a remedy for any lack of conformity in relation to a package so could presumably apply to misleading information in the contract • similarly, compensation is also available as a remedy for any lack of conformity in relation to a package so could presumably apply to misleading information in the contract too, unless it is (1) C's fault, or (2) an unconnected 3rd party's fault and is unforeseeable or unavoidable, or (3) due to unavoidable and extraordinary circumstances
<p>PCI</p> <p>[a5, 6] [r5, 6, Schedules 1-10]</p>	<p>Prescribed and binding brochure content</p> <p>Some</p>	<ul style="list-style-type: none"> • no brochure specific provisions • but most PCI package details form an integral part of the contract • most of the information previously required now forms part of the PCI requirements + some new information

	<p>information before contract made</p> <p>Some information in good time before the journey</p>	<ul style="list-style-type: none"> • plus 1 of 3 standards information forms (SIFs), depending on whether hyperlinks are available and type of package, to explain C's rights • changes to PCI package details must be expressly agreed by C • 5 SIFs for LTAs, so C knows not a package and effect on insolvency protection arrangements and key C rights for LTAs • some criminal offences
<p>Contract confirmation</p> <p>[a7,8] [r7, Schedules 1 & 5]</p>	<p>Some prescribed content</p> <p>Supply of all the terms before contract made</p> <p>Written copy to be supplied (no timing)</p> <p>No criminal offences</p>	<ul style="list-style-type: none"> • to contain package PCI and additional information (some new, including ADR mechanisms and insolvency protection arrangements) • copies or confirmation can be written or in a durable medium depending on how contract made • requirements re legibility, use of plain intelligible language, clarity, comprehensibility and prominence • burden of proof (BoP) is on T to show compliance with all information requirements • new criminal offences for non-compliance with the contract content and some of the manner requirements
<p>Before the package starts</p> <p>[a7(5)] [r7(9)]</p>	<p>Times and places of intermediate stops and connections</p> <p>Criminal offences</p>	<ul style="list-style-type: none"> • relevant travel documents must be supplied, e.g. tickets, vouchers or receipts • scheduled departure, arrival and check-times must also be provided as well as those for stops and connections • no criminal offences for non-compliance
<p>Booking transfers</p> <p>[a9] [r9]</p>	<p>Right to transfer booking to someone else if prevented from going</p>	<ul style="list-style-type: none"> • no requirement that C must be prevented from going before can transfer • T must inform C about the actual costs of the transfer, and provide proof • such costs must not be unreasonable and cannot exceed the actual cost incurred by the T due to the transfer

	Jointly and severally liable for payment balance and transfer cost	<ul style="list-style-type: none"> • C must give reasonable notice (7 days) on a durable medium • new right of termination at any time for a reasonable fee alongside this (see below) • only jointly and severally liable for transfer costs, not payment balance
Price alterations [a10] [r10]	30 days notice Significant price increases (10%+) - certain remedies Organiser absorbs 2%	<ul style="list-style-type: none"> • 20 days notice has to be given • notification of the increase must be clear and comprehensive and accompanied by a justification and a calculation, and be on a DM • if there is a price decrease, the TO can deduct actual administrative expenses from the refund • 8% price cap for price increases, beyond which right to free cancellation • no absorption of first 2% by organiser • same grounds for basis of price changes and need for variation clause
Significant alterations [a11] [r11]	Provisions related to essential terms (not defined) Including permitted 10%+ price increases Organiser to notify C asap of changes	<ul style="list-style-type: none"> • provisions relate to main characteristics (defined as part of PCI) • and when the organiser cannot fulfill any special requirements agreed with C as being part of the package • and permitted price increases over 8% • significant is still not defined • remedies are similar to previously • notification to C is required twice before organiser can then terminate the package contract and refund C • price reduction/compensation may be payable in similar circumstances to previously
Termination [a12] [r12, 13]	Remedies if organiser terminates Compensation not payable if because of unusual and unforeseeable	<ul style="list-style-type: none"> • remedies similar - refunds and compensation unless certain circumstances • substitute packages not mentioned • no compensation if due to unavoidable and extraordinary circumstances • or insufficient numbers and correct notice given (new specified periods) • free cancellation for C before departure in cases of unavoidable and extraordinary circumstances at the destination or its

	<p>circumstances beyond organiser's control</p> <p>No rights for C to terminate package contracts</p>	<p>immediate vicinity</p> <ul style="list-style-type: none"> • if they significantly affect performance of the package OR transport to the destination • e.g. natural disaster, war or other serious situations • new right for C to terminate/withdraw before the package starts, in addition to retained right to transfer • this is subject to appropriate and justifiable fees
<p>Liability for package performance</p> <p>[a13] [r14, 15, 16, 17]</p>	<p>Liability of organiser for proper performance of the package, regardless of who performing each travel service</p>	<ul style="list-style-type: none"> • same liability for organiser • remedies similar but operate differently • see additional requirements below if a significant proportion of the travel services cannot be provided • organiser must remedy any lack of conformity within a reasonable time (RT) (set by C) or remedies apply, dependent on whether was possible or proportionate and whether a significant proportion of services could not be provided or lack of conformity substantially affects performance • the main remedies are alternative arrangements, price reduction and or compensation, depending on various factors • if O refuses or immediate remedy is required, C can remedy and claim necessary expenses • termination may be available if a lack of conformity substantially affects performance and the organiser doesn't sort it out within a RT • if transport is part of the package, then O must provide free repatriation without undue delay • if O is unable to ensure C's return because of unavoidable and extraordinary circumstances, O must bear the cost of necessary accommodation for up to 3 nights (or the period specified in EU passenger rights legislation if more) • no limit for certain air passengers, e.g. if C has reduced mobility • clear identification of the party liable is required in the PCI

		<ul style="list-style-type: none"> • Member States can choose whether retailers have full liability (UK not) • retailers have a new duty to act as a point of contact for Cs in respect of messages, complaints or claims relating to packages they have sold on behalf of O
<p>Significant proportion of services not provided</p> <p>[a13] [r15]</p>	<p>C to be offered alternative</p> <p>C can refuse for good reasons and O to provide equivalent transport back to place of departure or other agreed place</p> <p>Compensation if appropriate</p>	<ul style="list-style-type: none"> • specific provisions apply when the organiser is unable to provide a significant proportion of the travel services in the package • C can only reject alternative arrangements if they are not comparable or the price reduction is inadequate • free repatriation may be necessary (see above) • if the organiser is unable to ensure C's return - see above • price reduction and or compensation may be available as explained earlier
<p>Liability for booking errors</p> <p>[a21] [r28]</p>	<p>None</p>	<ul style="list-style-type: none"> • a new implied term in every package contract • T is liable for any errors due to technical defects in the booking system which are attributable to that T • if T agrees to arrange booking (package or LTA), T will be liable for any errors made during the booking process • no liability if C's fault or are caused by unavoidable and extraordinary circumstances
<p>Insolvency</p> <p>[a17-19] [r19-26]</p>	<p>Protection required for refunds and repatriation using:</p> <p>Bond Bond with insurance</p>	<ul style="list-style-type: none"> • package insolvency protection requirements are similar to previously • package holidays sold in the UK to have insolvency protection through ATOL for the flight-sector, or a bond, insurance or trust fund in the non-flight sector • current BEIS approved bodies for bonds: <ul style="list-style-type: none"> ○ Association of British Travel Agents

	Insurance Trust fund Trust with insurance	<p>(ABTA)</p> <ul style="list-style-type: none"> ○ Association of Bonded Travel Organisers Trust (ABTOT) ○ Bonded Coach Holidays (BCH) <ul style="list-style-type: none"> ● new category of LTAs requiring some insolvency protection ● PCI requirements so C knows whether package or LTA and effects of insolvency (5 SIFs for LTAs and 3 SIFs for packages) ● an LTA facilitator must provide insolvency cover for the refund of payments received from C to the extent that a travel service is not performed due to their insolvency ● this would not cover all payments, e.g. wouldn't cover C's direct payment to a travel service provider, who is not the facilitator ● however, if an LTA facilitator receives money for an additional travel service they are not providing and they become insolvent before passing this on, their insolvency protection would be expected to cover it. This is because the additional travel service (not paid for) would not have been performed as a consequence of the LTA facilitator's insolvency ● insolvency protection to cover refunds is not needed if the facilitator does not receive any money from the traveller ● repatriation cover for LTAs only required if the facilitator also responsible for C's transport, e.g. a coach operator ● mutual recognition of EU protection rules ● Ts not established in the UK or another EEA MS, selling packages in the UK, or by any means directing such activities to the UK must comply with the UK insolvency regime ● UK established retailers who sell packages combined by organisers outside the EEA must take on responsibility for package performance and providing insolvency cover, unless they can show that the organiser already complies
<p>Refunds</p> <p>[a14]</p>	No time periods for refunds	<ul style="list-style-type: none"> ● where refunds are due, they have to be made within 14 days in most instances

[r14]		
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G6 Timeshares etc

EU law provides protection for Cs buying timeshares, and similar products, from Ts and these provisions have been implemented in the UK by the Timeshare, Holiday Products, Resale and Exchange Regulations 2010, (the Timeshare Regulations). Rights are provided for C at various stages throughout the selling process, including in relation to:

- ✓ marketing and sales information
- ✓ PCI
- ✓ form and content of contracts
- ✓ withdrawal and termination
- ✓ the timing of payments

There are 4 types of “holiday accommodation contracts” [r2(1) and r4] (regulated contracts) as identified in table G6:

Table G7: Types of holiday accommodation contracts

Contract type	Definition	Comments
Timeshare contract [r7]	Where C acquires the right to use overnight accommodation for more than one period of occupation The duration must be for more than 1 year (or allow for renewal or extension so that it lasts for more than 1 year)	Accommodation includes within a pool of accommodation Traditional hotels or apartments will be covered as well as boats and caravans Arrangements are sometimes for a specific number of years or last indefinitely C usually pays a one-off fee, which depends on the week number in the year, followed by annual maintenance fees
Long term holiday product contract (LTHP) [r8]	C acquires the right to obtain discounts or benefits in respect of accommodation The duration must be for more than 1 year (or allow for renewal or extension so that it lasts for more than 1 year)	Other services may also be provided Sometimes referred to as holiday clubs

Resale contract [r9]	Where a T assists a C with either buying or selling rights under either a timeshare or LTHP contract	Timeshares can be sold on to others
Exchange contract [r10]	Where a C who has a timeshare contract also joins a timeshare exchange system allowing access to overnight accommodation or other services in exchange for giving others temporary access to theirs	This allows swapping of timeshare weeks so that staying somewhere else can be experienced

A number of contracts are specifically excluded from these definitions [r6]:

- multiple reservations - where hotel rooms are booked for a series of stays over a year in advance
- lease agreements - which provide for a single continuous period of occupation
- insurance contracts - contracts regulated by the Financial Services and Markets Act 2000
- loyalty schemes - where a group of hotels gives customers free membership of a scheme allowing them discounts on future stays

G6.1 Key information

There are a number of requirements relating to how the timeshare industry markets its products to Cs and how it persuades Cs to enter into contracts to try and ensure that C has appropriate details. This requires the supply of key information at various early stages.

G6.1.1 Marketing [r14]

There are 3 requirements relating to how marketing and sales are carried out, and they cover:

- ✓ advertising - which must state how the prescribed key information can be obtained
- ✓ invitations - which must indicate the commercial purpose and nature of the event
- ✓ promotional or sales events - where the prescribed key information must be made available to C throughout the event

G6.1.2 PCI requirements [r12]

The prescribed key information must be given to Cs “in good time” before a contract is entered into. Government guidance issued when the Timeshare Regulations came into force, stated that Cs should have “adequate opportunity to be able to familiarise themselves with the information so that a decision to purchase may be properly informed”. The guidance also suggests that this

is a subjective test which means that some Cs may need more time than others. If a contract falls into more than one category, each relevant set of key information must be provided.

G6.1.3 Format for the key information [r12(3), r13]

Key information is contained in a standard information form (SIF) and there is one for each of the 4 types of contract [Schedules 1 – 4].

Each schedule is divided into three parts and the detail required differs depending on whether it is a timeshare, LTHP, exchange or resale contract:

- Part 1 - standard information about the product (T to insert details and not delete text)
- Part 2 - general information about C's rights (which cannot be amended)
- Part 3 - additional information (reference can be made to another document, e.g. a brochure)

G6.1.4 How the key information should be provided [r12(4) & (5)]

The key information should be:

- ✓ clear
- ✓ comprehensible
- ✓ accurate
- ✓ sufficient to enable C to make an informed decision about entering the contract
- ✓ in writing
- ✓ in the standard information form (SIF)
- ✓ in accordance with the Regulations, i.e. in the right details in the appropriate parts
- ✓ free
- ✓ in a manner which is easily accessible to C
- ✓ in an official EEA language (for residents and nationals of an EEA State)

G6.1.4.1 Official languages [r12(7)]

If a country has more than one official language, C must be given the opportunity to choose which they prefer. If they do not nominate a language then the requirement is satisfied if the information is provided in any of the country's official languages. This only applies to residents and nationals of a particular country.

There are 13 EEA official languages: Danish, Dutch, English, Finnish, French, German, Greek, Icelandic, Italian, Norwegian, Portuguese, Spanish and Swedish.

G6.1.5 Trader obligations [r16]

T must draw C's attention to certain matters before entering into a regulated contract, and obtain a signature in relation to each section of the contract dealing with them:

- ✓ the right to withdraw from the contract
- ✓ how long C has to do this
- ✓ the fact that no advance payments (deposits) can be taken

G6.2 Contractual rights

There are a number of provisions requiring T to conform to certain requirements with regard to the actual contract, starting with the need to provide C with a copy of it when it is concluded [r16(3)].

G6.2.1 Form and content of contracts [r15]

T must not enter into a regulated contract with C unless it:

- ✓ is written
- ✓ includes certain details (identity and place of residence of each party)
- ✓ is signed by each party
- ✓ is dated (date and place of conclusion of the contract)
- ✓ sets out the key information as terms of the contract
- ✓ does not contain any changes other than permitted ones
- ✓ includes a standard withdrawal form (SWF)
- ✓ has been drawn up in an official EEA language (see G5.1.4.1)

G6.2.2 Permitted changes [r15(5)]

Key information can only be changed with the express agreement of C and if the change is communicated to C in writing before the contract is concluded; OR

If the change resulted from unusual and unforeseeable circumstances beyond Ts control, the consequences of which could not have been avoided even if all due care had been exercised. The BIS Guidance suggests that this is a tough test which is only likely to be met in very exceptional circumstances. It also suggests that C's express agreement could be indicated by a separate signature next to the relevant information or a separately signed addition to the contract which clearly explains the changes.

G6.2.3 Language requirements [r17 & r18]

Contracts must be drawn up in English if either:

- ✓ C resides in the UK, or
- ✓ T carries on sales activities in the UK

Additionally, contracts must be drawn up in an official language of an EEA State (G5.1.4.1) where C is a resident or a national, and if there are more than two such languages, C must be given the opportunity to choose one.

If the contract is a timeshare and relates to a single item of specific property (i.e. not a boat or a caravan) and it is not drawn up in an official EEA language, then T must provide C with a certified translation, i.e. carried out by someone who is authorised to make or verify translations for court proceedings.

G6.3 Rights to withdraw and terminate contracts

C has a period during which they can withdraw (W/D) from any of the 4 types of regulated contracts. In addition there is a right to terminate LTHPs.

G6.3.1 Withdrawal [r20 & r21]

The W/D period ends 14 days after the start date, i.e. whichever is the later of the following two dates:

- ✓ when the contract is concluded
- ✓ when C receives a copy of the contract

C must W/D in writing and can use the standard withdrawal form (SWF), which should have been included in the contract, or write making their intention clear and either will be effective when sent.

G6.3.1.1 Extension of the withdrawal period

The 14 day period may be extended if certain requirements are not complied with:

If a SWF is not included in the contract, the W/D period ends:

- ✓ 1 year and 14 days after the start date, or
- ✓ 14 days after C receives the SWF, if that is during the year

If the key information is not provided or is not provided properly, the W/D period ends:

- ✓ 3 months and 14 days after the start date, or
- ✓ 14 days after C receives the missing key information

If both situations apply, then the later date will apply.

G6.3.1.2 Effects of withdrawal [r22 & r23]

The following will occur if C successfully withdraws from a holiday accommodation contract:

- ✓ obligations under the contract are terminated
- ✓ contracts which are ancillary to timeshare or LTHP contracts are also terminated
- ✓ C is not liable for any costs or charges under either the contract or an ancillary contract, including services provided before the W/D
- ✓ any related credit agreement is automatically terminated, whether provided by T or a linked third party and whether to fund full or part payment (the obligation to tell the creditor is on T)

An ancillary contract is one under which C receives services which are related to the main contract and are provided by T or a linked third party, and includes an exchange contract related to a timeshare agreement.

G6.3.2 Termination [r24]

Only LTHP arrangements give C a right to terminate the contract. This is exercisable by giving notice to T within 14 days of receiving a request for payment of an instalment.

T has an obligation to give C at least 14 days written notice that an instalment is due [r26(4)], e.g. if there is a membership fee payable on an annual basis.

G6.4 Payments

G6.4.1 Deposits [r25]

There is a prohibition on deposits (advance payments) for all four types of contract. In relation to timeshare, LTHP and exchange contracts this means that T cannot take any money from C until the end of the withdrawal period and in relation to resale contracts, no money can be taken until the sale takes place or the contract is otherwise terminated.

This prohibition applies to any form of consideration being taken from C before the relevant dates, including payments, guarantees, reservations of money on account or acknowledgements of debt.

G6.4.2 LTHPs [r26]

In relation to LTHPs, T must not accept any payments unless they are in accordance with a compliant schedule. Such a schedule must provide for all payments, including any membership fee which should be divided into yearly instalments of equal value, taking into account the duration of the contract. The obligation is on T to prepare such a schedule and provide it to C. In other words membership of holiday clubs can only be on an annual basis, companies cannot take payment for the whole membership at the time of sale and Cs will then have a further 14

day withdrawal period each year when they receive the following year's membership invoice. C must receive 14 days notice, in writing, that an instalment is due.

G6.5 Remedies

Liability under the Timeshare Regulations cannot be excluded and any terms in a regulated contract that attempt to allow C to waive any of the rights provided by them, will be void [r19]. Some omissions on T's part will mean that the contract is unenforceable and others may lead to a claim for damages for breach of statutory duty.

G6.5.1 Unenforceability

If T does not comply with a number of the provisions in the Timeshare Regulations, then T will not be able to enforce the contract against C. Table G7 indicates when this is the case:

Table G8: When a timeshare or related contract may not be enforceable

Relevant provision	Reference
If T does not draw C's attention to the 3 matters in r16(1) before the contract is concluded (right to W/D, period for W/D, no deposits allowed)	r16(4)(b)
If T does not obtain C's signature in relation to the 3 matters in r16(1) before the contract is concluded (right to W/D, period for W/D, no deposits allowed)	r16(4)(b)
If T does not provide C with a copy of the contract when it is concluded	r16(4)(b)
If T does not comply with the requirements relating to the format of a contract in r15	r15(8)(b)
If C is resident in the UK or T carries on sales activities there and T fails to draw up the contract in English	r17(5)
If T fails to draw up the contract in an official EEA language of the state where C is a resident or a national, or give C the opportunity to choose if there is more than one	r17(5)

G6.5.2 Damages

Other breaches of the Regulations are actionable as a breach of statutory duty [r35], the remedy for which is damages. Liability cannot be limited or excluded by any contract term or notice:

- ✓ not providing the key information in accordance with the PCI requirements [r12(1)]

- ✓ non-compliance of the contract with the requirements concerning form and content [r15(1)]
- ✓ not drawing C's attention to the 3 relevant points before entering into a contract (the right of withdrawal, period of withdrawal and that no deposits should be taken) [r16(1)]
- ✓ not ensuring that the contract is in an official EEA language [r17(1)]
- ✓ not providing a certified translation of a timeshare contract when required [r18(2)]
- ✓ not notifying the creditor that a withdrawal notice from C has been received [r23(3)]

Summary

- The **Timeshare Regulations** apply to arrangements made between C and T and lay down certain requirements with regard to the various stages encountered in the marketing and selling of those “holiday accommodation contracts”, falling into 4 defined categories, namely, **timeshare, LTHP, resale and exchange contracts**.
- The Regulations **cover the main areas of marketing and sales information, PCI, form and content of contracts, rights of withdrawal and termination and payments**, and they apply to the EEA, which comprises the countries in the EU and also three outside it, namely, Iceland, Lichtenstein and Norway.
- For a **timeshare** arrangement to be regulated, it must be right to **use overnight accommodation for more than one period of occupation for more than one year** and the definition applies to boats and caravans as well as the more traditional immoveable property.
- There are three important requirements relating to how marketing and sales are carried out, and they are in relation to firstly, **advertising**, which must state **how key information can be obtained**, secondly, **invitations**, which must indicate the **commercial purpose and nature of the event** and thirdly, **promotional or sales events**, where **key information must be made available to C throughout the event**.
- Key information is contained in a **SIF** and there is **one for each of the 4 types of contract, each one being split into 3 parts containing, standard, general and additional information**, which must be given in good time before a contract is made to facilitate information familiarisation and informed decision making.
- **Key information should be in accordance with the Regulations**, i.e. clear, comprehensible, accurate, sufficient to enable C to make an informed decision, in writing, in the correct SIF, free, easily accessible and in an **official EEA language** (for residents and nationals of an EEA State).
- Other PCI requirements are that T must draw C’s **attention to certain matters and obtain signatures** to show that he has done so, in relation to: the right to withdraw, how long C has to do this and the fact that no advance payments (deposits) can be taken.
- T must provide C with a **copy of the contract when it is concluded, and comply with other requirements relating to form and content**, namely, contracts must: be written, include certain details, be signed by each party, be dated, set out the key information as terms of the contract, contain only permitted changes, include a SWF and be drawn up in an official EEA language.
- Cs have **14 days to withdraw in writing** from any of the 4 regulated contracts, starting after the later of either when the contract was concluded or when C received a copy of it, although this **can be extended if either the SWF or the key information are not provided**.
- There is a **prohibition on deposits for all 4 types of contract** and in relation to timeshare, LTHP and exchange contracts this means that T cannot take any money from

C until the end of the W/D period and in relation to resale contracts, until the sale takes place or the contract is otherwise terminated.

- **LTHPs can only operate on an annual basis**, companies cannot take payment for the whole membership at the time of sale and Cs will then have a further 14 day withdrawal period each year when they receive the following year's membership invoice, which **must give 14 days notice, that an instalment is due.**
- The consequences of not complying with the Regulations are varied and Ts may find that they have committed **criminal offences**, have **contracts which are unenforceable** and or owe Cs **damages for breach of statutory duty.**