

## Dynamic Package Travel Holidays - Advice

A **dynamic package** holiday may look and seem like a **regulated package holiday** but it is not.

A regulated package holiday is protected by powerful consumer law in the form of the **Package Travel [Etc] Regulations 1992**. **Dynamic package holidays are not protected by these Regulations.**

A dynamic package exists when components such as **hotel** accommodation, **resort transfers** and perhaps **flights** are each **purchased at individual prices** often from **different service providers**.

In essence the **holiday is made up of several separate contracts** each with separate principal suppliers.

A regulated package holiday exists when two or more pre-arranged services (eg flights and accommodation) are supplied at an inclusive single price covering a period of more than 24 hours by one principal supplier (often called a tour operator).

### How do I know if my Holiday is 'Regulated' or 'Dynamically' packaged?

This question is becoming increasingly more difficult for even experienced lawyers to answer as **travel organisers seek to hide** the fact that the holidays they are supplying are being **supplied as dynamic holiday packages** and not regulated holiday packages.

The simple way is to **ask your travel agent** this question and to ensure you receive their **reply in writing** and keep it in a safe place,



### Is my holiday protected by the Package Travel Regulations 1992?

The reply to this question should be a straightforward "YES" or "NO". Be very suspicious if your travel agent will not answer this question or tries to avoid providing a single worded answer – It is a very simple question.

If the answer you receive is "YES" then you can have complete peace of mind.



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If the reply to this question is "NO" and you wish to proceed knowing that your holiday is not protected by the *Package Travel Regulations 1992* then you may wish to ask the following questions to ensure that your money is protected – again **seek a written reply** for your own peace of mind:

**“Is this holiday ATOL protected?”** – The answer to this question should be yes. If it is “NO” then do not make your holiday arrangements through the company concerned. All travel organisers selling air seats must hold an ATOL (Air Transport Operators Licence) – If they do not they are trading illegally and in the event that the airline goes bust you will lose all your money and worse you could be left stranded abroad;

**“Is this holiday ABTA or AITO protected?”** - These two trade associations provide bonding schemes which are similar to ATOL and will ensure that your **money is safe** should the travel agent cease trading or your flight operator goes bust. Membership of these associations requires members to abide by strict Codes of Conduct.

**“Will I be reimbursed the cost of my holiday if the airline ceases trading?”** – Whilst your flights maybe protected by the company’s ATOL or trade association you should find out what happens to the money you will have paid for other services such as accommodation should the flight operator go bust – You may find that your money for other services is not protected and that you will need to enquire about additional insurance if you are not already covered.



BE AWARE: With today’s advance of internet holiday providers often with very professional looking websites it is very easy to fall into the trap of believing you are purchasing your holiday through a reputable company - Before you book check out the holiday company through consumer forums such as [HOLIDAY-TRUTH.com](http://HOLIDAY-TRUTH.com).

You should look out for trade affiliations to provide you with additional confidence. Trade associations that should provide peace of mind include ABTA (Association of British Travel Agents) and AITO (Association of Independent Tour Operators). If the company is not registered with one of these or similar associations then ask yourself why they are not registered members?

### The Advantages of Dynamic Packaging

- It is often perceived that dynamically packaged holidays are cheaper than traditional package holidays;
- Dynamic packaging allows more flexibility for the holidaymaker to put together their own unique holiday.



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### The Disadvantages of Dynamic Packaging

- If you have a complaint about the quality of the services provided you will be left to pursue it with the actual supplier of the service – which will often mean pursuing your claim abroad which will be expensive and very difficult as you will be pursuing it under the law and through the legal system of the supplier's country;
- Suppliers of regulated package holidays understand that they have strict obligations to ensure that the services are provided to a reasonable standard – This could mean that the hotels they use are fully checked and monitored for health and safety – There is no requirement for providers of dynamically packaged holidays to do the same;
- If your holiday plans are ruined before they begin by industrial action or adverse weather conditions then you may find that you could lose, for example, the money you paid for your accommodation. With a regulated package holiday if your holiday is delayed then after a reasonable period of delay you can ask your tour operator for a full refund of all the money paid for your holiday.

### What happens if something goes wrong?

This will depend on your contract with the travel agent or travel organiser and in most cases your contract with the actual provider of services.

In most cases the travel agent or organiser is only responsible for arranging the services – they are not responsible for the quality of those services.

In most cases your complaint will be with the actual supplier of the services. Typically this may mean your complaint could be against the hotel – which as it is abroad would mean pursuing your claim in the country where the hotel is located.

You will be able to claim compensation from your travel agent if the holiday was misrepresented.

However – a misrepresentation means that the actual services were misrepresented – not that they were merely substandard.



### My Airline Has Ceased Trading?

In all cases where travel organisers sell air flights they must hold an Air Travel Operator's Licence (ATOL) which means you are fully protected in relation to your flights if the airline ceases trading.

The ATOL scheme guarantees financial security for flight-only travel on charter airlines and in some circumstances flights with scheduled airlines.



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However, if you have booked accommodation separately you could find that you will lose the money you have paid for the accommodation if you cannot get there. This also applies in situations such as when an extraordinary circumstance arises – such as adverse weather conditions, industrial action, etc.

In this situation whilst your payments for flight seats will be protected the accommodation supplier may be under no obligation to reimburse you the cost of your accommodation as they will say that the accommodation remained available for your use.

Also – if you purchase flights directly with an airline then you will not have ATOL protection. This also generally applies if you bought your ticket from a travel agent and either received your ticket immediately or within 24 hours.

Note: If your ticket has been purchased from a travel agent and you do not receive your ticket within 24 hours then the travel agent must supply information in the form of a document that explains clearly:

- Your money has been protected by the travel agent who has arranged insurance against the scheduled airline's failure; or
- There are no arrangements in place to protect your money should the airline fail; or
- The full name of the company who has provided an undertaking to the Civil Aviation Authority that there are arrangements in place to protect your money if the airline fails.

If you have purchased your flight seats directly through the airline then as airlines do not need to hold ATOL's you will need to look to the following:

- Your credit card provider. If you purchased your flights using a credit card (not a debit or charge card) you can make a claim against your credit card provider pursuant to Section 75 of the [Consumer Credit Act](#) providing the cost of the flights was more than £100 and less than £30,000;
- Travel Insurance. Check your [travel insurance](#) policy as it may insure against the loss of scheduled flights;
- Visa debit card. If you purchased your air seats using a Visa debit card then contact your current account provider who will try and recover your money.

### Scheduled Airline Failure Insurance (SAFI)

If the money you have paid for your flight ticket is not protected you should ensure that your insurance covers you for scheduled airline failure – This type of insurance can now be arranged often through your travel agent.

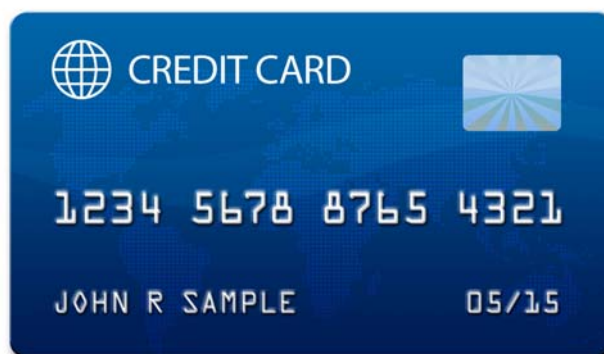
If you choose to purchase SAFI yourself then check the policy carefully as certain airlines are sometimes excluded.

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### Using a credit card

Contrary to the belief that using a credit card to purchase the components of your dynamically packaged holiday to give you added protection this is far from true in many circumstances.

When you purchase a dynamic package you are entering into a contract with the travel agent to **arrange and supply** the services which may include flights, resort transfers and accommodation.



Your contracts for the **supply** of the services are not with the actual providers of the services.

However, your contracts for the **performance** of the services will be with the providers of the services.

So if you arrive at your hotel in Spain and you are disappointed with the quality of your accommodation your complaint will be with the provider of the accommodation and not your travel agent. Your travel agent in this circumstance fulfilled their contractual obligation by arranging the accommodation – remember unless your contract with the travel agent states otherwise the travel agent is not responsible for the actual performance of the services arranged.

Consequently you will not be able to pursue a compensation claim against your travel agent.

The further consequence of this is that as you have no claim against your travel agent you have no claim against your credit card company – as to pursue a claim against your credit card company you must have a “like claim” against your travel agent.

You will not be able to pursue your credit card provider for the poor quality of the accommodation as they did not have a contract with the accommodation provider. Their contract was between you and the travel agent.

**TOP TIP: If you decide to book air seats directly with an airline and the cost is more than £100 in total then pay at least part of the cost using a credit card (not a debit or charge card). In this circumstance if the airline goes bust your credit card company will be responsible for reimbursing you the total cost of your lost flights and any reasonably incurred expenses you suffer as a consequence.**

### Sale and Supply of Goods and Services Act 1982 (SSGSA)

This Act is intended to protect people who purchase services such as holidays but it is very limited in its helpfulness.

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If your holiday is dynamically packaged you are not necessarily protected by the SSGSA.

Again your contract will be with the principal contracting party – usually, for example, the hotel abroad. Pursuing a claim against a travel agent may be fruitless as they will say that their only obligation to satisfy the requirements of the SSGSA was to arrange the services that made up the holiday with reasonable skill and care – not to perform the services.

In other cases where the travel agent or another holiday company does act as the principal contracting party they will say that their duty only extended to selecting their suppliers with reasonable skill and care – this duty could be fulfilled simply by checking that the hotel has a licence to operate.

### Practical Steps to Take If Something Goes Wrong On Holiday

- Follow your holiday company's complaints procedure – you will find this in the small print of the terms and conditions you have entered into with your holiday company;
- When you book your holiday you should be given the contact details of a local agency or representative in the resort who are there to assist you. Contact them and report your problems and ask them to resolve them;
- If cannot achieve an adequate resolution ask to record your complaints in writing and ensure you are given an keep any complaint forms;
- Complain to the service provider and seek a resolution – remember to keep calm do not get angry or abusive;
- Take photographs, video and DVD recordings of the problems you experience;
- Keep all receipts for purchases and expenses that result from the problems you experience;
- Collect the names and contact details of any other holidaymakers who you speak to and are equally dissatisfied.



### Practical Steps to Take When You Arrive Home

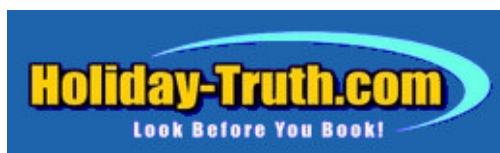
- Again - Follow your holiday company's complaints procedure;
- Ensure that you put in writing all of your complaints and how you would like the holiday company to redress them. Make sure your letter is constructive and do not become abusive – a judge may later read your letter!
- Often holiday companies claim that correspondence has not been received or has been lost. If your holiday company has an email address then send an email version of your complaint;
- Try to find out the name of the person dealing with your complaint – ask for their email address and email them regularly for updates on the progress;

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- If your complaint remains unresolved you should complain to any of the associations your travel agent is affiliated to - Eg ABTA or AITO, etc;
- If you fail to reach a resolution then either arbitration or the small claims court may be your only remaining options – however as it has been explained your travel agent's only obligation may have been to arrange the services and therefore if your complaint concerns the quality of the services you may find that a claim through arbitration or the small claims court will prove unsuccessful.

### Your Holiday Experience

Whether you have had a good or bad experience please share this by posting a review on [HOLIDAY-TRUTH.com](http://HOLIDAY-TRUTH.com) – the only major independent review site for holidaymakers.



It is important to share your experience for many reasons – if a holiday company has provided a great service then this must be applauded – whereas if a holiday company has provided an abysmal service this needs to be flagged up.

Your review will help other holidaymakers and encourage holiday companies who let down consumers to clean up their act.

### Simpson Millar Solicitors LLP

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#### Disclaimer

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