Regulated Package Travel Holidays - Advice

Compensation for holiday problems

Your Legal Rights

If your holiday was booked as a "package holiday", and is protected by the *Package Travel [Etc] Regulations 1992* your tour operator or in some cases your travel agent is responsible for the proper performance of your holiday contract.

Who is responsible for providing the holiday you paid for?

Your contract is with the organiser of your holiday – this could be a tour operator or a travel agent.

Typically a travel agent will sell holidays arranged by tour operators but sometimes the travel agent may organise the various components such as flights and accommodation and in this scenario they will be the organiser.

The organiser of your holiday is responsible for ensuring that the services are provided with reasonable skill and care.

The organiser is also responsible for the acts and omissions of its suppliers and their employees. For example the organiser is responsible for the quality of the food served at your hotel and for the standard of service you receive.

Your Right to Receive the Holiday You Booked

Pursuant to the *Package Travel [Etc] Regulations 1992* the **company who organises your holiday is responsible for supplying all components of the holiday**. You have a right to:

- receive the holiday you booked and/or was described to you;
- receive the holiday at the price you agreed to pay;
- believe that the information you are given concerning the holiday is factually accurate and not misleading;
- receive holiday accommodation that is hygienic and reasonably safe.

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Changes or Cancellation of your Holiday before you Depart

If there are **significant changes** to any aspect of your holiday, for example your accommodation is changed, before you depart or if your holiday is cancelled you automatically have the right to the following:

- a full refund of all the money you have paid without any cancellation fee being charged;
- to accept a lower standard of holiday and receive a refund of the difference in price you paid for the original holiday and the replacement, or
- accept an alternative holiday of the same or higher standard without paying any more than you paid for your original choice of holiday.

You may also be entitled to compensation which will be explained in the terms and conditions of your holiday contract which you should read carefully before you make your holiday booking.

You may also be entitled to be compensated for your out-of-pocket expenses and losses as a consequence of your holiday being changed. For example, you may have booked and paid for car rental that you cannot make use of.

Note: If the change to your holiday is due to an exceptional circumstance and outside the control of your holiday company then you will not be entitled to compensation unless the holiday company knew in advance of the problem and let you travel anyway. Exceptional circumstances may include, for example, natural disasters and events such as hurricanes.

Price Increases

If the price of your holiday is increased you have the same rights as though your holiday had been changed before departure. When you have confirmed your holiday booking the cost can only increase if any such increase is properly explained in the terms and conditions of your holiday booking and providing the increase is for one of the following:

- transport costs, for example, an increase in the cost of fuel;
- a price rise in costs and taxes for services, for example landing fees;
- changes in currency exchange rates.

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Note: The price of your holiday cannot be increased inside 30 days from the date of your departure and the holiday company must absorb the 2% of any increase.

Your Holiday has been mis-sold or mis-represented

You have protection if your holiday accommodation or resort has been misrepresented.

Your holiday company is under a duty to offer you an alternative but if it cannot then you can ask to be flown home.

In this circumstance you would be entitled to claim compensation for:

- loss of bargain – the difference in what you paid for and what you received;
- out-of-pocket expenses - you may have incurred costs such as taxi fares, phone calls, etc
- loss of holiday enjoyment – compensation for the upset and disappointment you have been caused.

Note: You must be reasonable. You have a duty in law to 'mitigate' your loss. This means that you must make reasonable attempts to make the best of the situation. You will not be entitled to claim compensation if your complaints are trivial or your actions are unreasonable. You cannot claim compensation because your own expectations were too high.

Your Holiday Company Ceases Trading or Goes Bust

Your Travel Agent: If your travel agent goes bust and you have purchased a package holiday then your holiday should not be affected. It is the tour operator who you have paid your money to and they will remain responsible for your holiday arrangements. You should contact your tour operator if your travel agent goes bust so that you can make sure that they have your contact address and details. They will be able to advise you about how your holiday arrangements will be handled.

Tour operators: Should your tour operator cease trading then your travel agent will be able to advise you. Your money will be protected as the *Package Travel [Etc] Regulations 1992* require that regulated package holidays are bonded.

You are Unable to Take Your Holiday

Should you find yourself unable to travel on the holiday because, for example, you or someone close to you suffers an illness or bereavement, unless stated otherwise in your holiday booking terms and conditions you

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are not entitled to receive a refund of the money paid or owing in some case depending on how close to the departure date the circumstance arises.

Under the *Package Travel [Etc] Regulations 1992* you do have a legal right to transfer your holiday to someone else (perhaps a friend or relative) but you must expect to be charged a fee by your holiday company if you decide to do this.

You should immediately speak to your insurer if you are unable to travel. They will advise you and most reputable insurers will cover this situation.

Special requirements

Special requests made before the holiday are not guaranteed to be honoured by the holiday company. They are simply requests and not terms or conditions of your holiday contract.

However, if you have special needs such as a disability that will require you or a relative to receive additional services, such as a wheelchair lift at the airport, a low-floor room, special facilities, etc, then you must explain this to your travel agent or tour operator and ensure that it is made a 'condition' of your holiday booking.

You will need to check that **your 'special requirements' appear on the holiday booking documents** you receive and **not under the section titled 'special requests'**. By following this advice your special requirements become **terms of your holiday contract** which will enable you to claim compensation from your holiday company if they are not met.

Note: If you or a relative has any special requirements such as a disability, food allergy, medical condition, etc, then you should ensure that you explain this fully to your holiday company. They will then be under a legal obligation to ensure that the holiday is suitable.

Problems on Holiday – Steps You Should Take

- Your tour operator will explain its complaints procedure in the terms and conditions of your holiday booking – you should follow the procedure;
- Report your complaints to your holiday representative at the earliest opportunity. If your representative is not available then you can contact your tour operator's resort office – their contact details must be displayed on the noticeboard in the reception area of your accommodation;
- When you make your complaint ask for your complaint to be written on a complaint form and make sure you receive and keep a copy of your written complaint form;
- You should also complain to the provider of the service – keep calm do not get angry or abusive – the service provider may be able to resolve your complaint quickly and to your satisfaction;
- Take photographs, video and DVD recordings of any problems you encounter so that you have evidence to support your complaints;

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- If you incur additional expenses due to a problem that is not your fault make sure you keep receipts as you will need to produce these if you subsequently wish to reclaim your out of pocket loss;
- If other holidaymakers are experiencing similar problems then swop names and contact details. Independent evidence is often the best evidence.

Holiday Problems – How to Complain

- You must follow your tour operator's complaints procedure;
- Be reasonable. Claim only the compensation you believe is appropriate. If you are greedy or unrealistic a judge will frown upon this;
- In the first instance – write to your tour operator and explain the problems you encountered and how you would like them to be resolved. Make sure your letter is to the point and not a long-winded rant. You should have in mind that if your complaint ends up in a court a judge will read your letter;
- To ensure that the tour operator has received your letter you should also email a copy to the company's Customer Services Department;
- Find out the name of the person who will be dealing with your complaint and insist that you speak to them. You will be able to fully explain your grievance so that the person will have a better understanding of your complaint when they consider it;
- You may also complain to any of the trade associations your tour operator or travel agent is affiliated to - Eg ABTA or AITO, etc;
- Also – if you do not receive a reply from your tour operator within 28 days you should report them to their trade association – For example ABTA fine its members upto £400 if they do not reply to customers within the specified time;
- If your dispute remains unresolved then you may need to pursue your complaint through either arbitration or the small claims court.

Note: If your complaint concerns a personal injury or an illness you contracted on holiday before contacting your tour operator seek legal advice from a specialist. Most people do not realise how much their injury claim is worth and tour operators can be quick to pay off those claims often for very inadequate sums.

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Your Holiday Experience

If you have had a great holiday or a terrible holiday please tell others by posting a review on **HOLIDAY-TRUTH.com** – Your review will help other holidaymakers in the same position as you and alert others planning trips abroad.

By posting a review you will be helping to name and shame those holiday companies and hotels who let people down and to praise those who have provided an excellent service.

By sharing your experience you will be helping to ensure that holiday companies raise their standards or risk losing their reputation.

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Simpson Millar Solicitors LLP accept on holiday accident and illness compensation claims on a 'no win no fee' basis. If you have suffered a personal injury abroad or an illness due to poor hygiene at a hotel find out if you have a case.

If Simpson Millar accept your claim and you quote 'claim250' then you can look forward to getting a cheque for £250 as a thank you for instructing Simpson Millar's Holiday Accident and Illness Claims Solicitors.

Disclaimer

This guide contains information on current legal issues applicable at the time of writing. Note there may have been changes subsequently which have not been incorporated in to the material. This guide is intended for information purposes only and its content should not be applied to any particular set of facts or relied upon without legal or other professional advice. For further information on how we can help you please contact:

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