

Wish you weren't here?

Quantifying holiday claims

In part one of a two-part consideration, Kirsty McKinlay and Amy Rollings examine damages recoverable from package holidays



Kirsty McKinlay (pictured top) and Amy Rollings are barristers at Nine St John Street

'Holiday claims are an exception to the general rule that in a contract claim, a claimant can be compensated for the "disappointment, the distress and the upset and frustration caused by the breach".'

Recent stories of Ryanair pilot shortages and Monarch's collapse have highlighted the plight of holidaymakers who, having booked a much-needed holiday, find it falls far short of their expectations. Lord Denning MR in *Jackson v Horizon Holidays* [1974] said:

People look forward to a holiday. They expect the promises to be fulfilled. When it fails, they are generally disappointed and upset. It is difficult to assess in terms of money, but it is the task of the judges to do the best they can.

The purpose of this article is to:

- discuss quantifying damages recovered in travel cases that fall under the Package Travel Regulations 1992 (PTR 1992); and
- consider the practicalities of evidencing the applicable law in claims that do not fall under the PTR 1992 where foreign law is applicable.

This part will look at claims which are included by the PTR 1992.

Damages in travel cases under the PTR 1992

All claims brought under the PTR 1992 are claims for breach of contract. The damages are divided into three categories:

- general damages (including loss of enjoyment);
- diminution in value/damages for loss of bargain; and
- special damages.

Loss of enjoyment

Holiday claims are an exception to the general rule that in a contract claim, a claimant can be compensated for the 'disappointment, the distress and the upset and frustration caused by the breach' (*Jarvis v Swans Tours Ltd* [1972]). The principal reason being, that the purpose of the contract is to provide a measure of peace of mind or freedom from distress.

In practice, loss of enjoyment claims are notoriously difficult to accurately quantify, however, there are two principles to note:

- Damages are not to be determined by reference to the sum spent on the holiday: *Scott v Blue Sky Holidays* [1985]. Therefore, regardless of whether a claimant

Ichard v Frangoulis
[1977] 1 WLR 556
Jackson v Horizon Holidays
[1974] EWCA Civ 12
Jarvis v Swans Tours Ltd
[1972] EWCA Civ 8
Milner & anor v Carnival plc
[2010] EWCA Civ 389
Scott & anor v Blue Sky Holidays
[1985] CLY 943

has been on a Butlins Holiday or a five-star cruise, there is no specific reason why the award needs to reflect the amount spent on the holiday itself (unless it is for a special occasion, as discussed below).

- In *Milner v Carnival plc* [2010], the Court of Appeal gave some guidance on the level of damages to be awarded for loss of enjoyment. At para 37, Ward LJ referred to:

... factors which will have a bearing on the amount of damages... [which] include the type of holiday, so that a special occasion, such as a honeymoon, is likely to attract more damages than for an ordinary annual package holiday.

Other factors include holidays for weddings, or special birthday or anniversary celebrations.

It is also worth noting that in *Ichard v Frangoulis* [1977], the claimant successfully claimed for loss of enjoyment of holiday arising out of a road traffic accident pre-departure which affected his subsequent holiday. Within his general damages claim, his loss of enjoyment of his holiday was reflected in the court's award.

Diminution in value/loss of bargain

The aim of this head of loss is to compensate the consumer for the

References

The 1990 Directive – Council Directive 90/314/EEC

The 2015 Directive – Directive (EU) 2015/2302 of the European Parliament and of the Council of 25 November 2015 on package travel and linked travel arrangements, amending Regulation (EC) No 2006/2004 and Directive 2011/83/EU of the European Parliament and of the Council and repealing Council Directive 90/314/EEC

monetary difference between the holiday contracted for and the holiday actually received. It is usually an arithmetical approach, calculated by working out the total cost of the holiday divided by the total number of days of the holiday, multiplied by the number of days affected by the breach. However, in some circumstances, if the contract was partially performed then some discount should be applied to reflect the partial performance.

For example, Judy Chalmers embarks on a ten-day luxury trip to India with Package Tours (PT) costing £5,000. As part of the terms of the contract, PT agrees to provide daily excursions from 9-6pm. In breach of the contract, she is dropped off at her secluded hotel at lunchtime every day, losing half of the day's activities. Her claim for diminution should therefore be £2,500 (being 50% of the prorated daily cost of £500 x 10).

Special damages

Out-of-pocket expenses and losses sustained as a result of the defendant's breach can be claimed as long as they are evidenced.

Examples specific to holiday claims may include payment for facilities that should have been provided to a reasonable standard within the holiday cost, eg sports equipment or the cost of alternative accommodation.

The new Package Travel Directive (the 2015 Directive)

The 2015 Directive was signed on 15 November 2015. It repeals and replaces the current Package Travel Directive (the 1990 Directive), which is transposed into UK law by the PTR 1992. The UK has to transpose the requirements of the Directive into UK law by 1 January 2018, and then has a further six months up to 1 July 2018 for these requirements to come into force. The new Directive does not substantially alter the provisions regarding damages applicable under the common law and the existing regulations.

Conclusion

Part two of this article will look at damages for personal injuries occurring on non-package holidays and the necessity for expert evidence on foreign law. ■

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