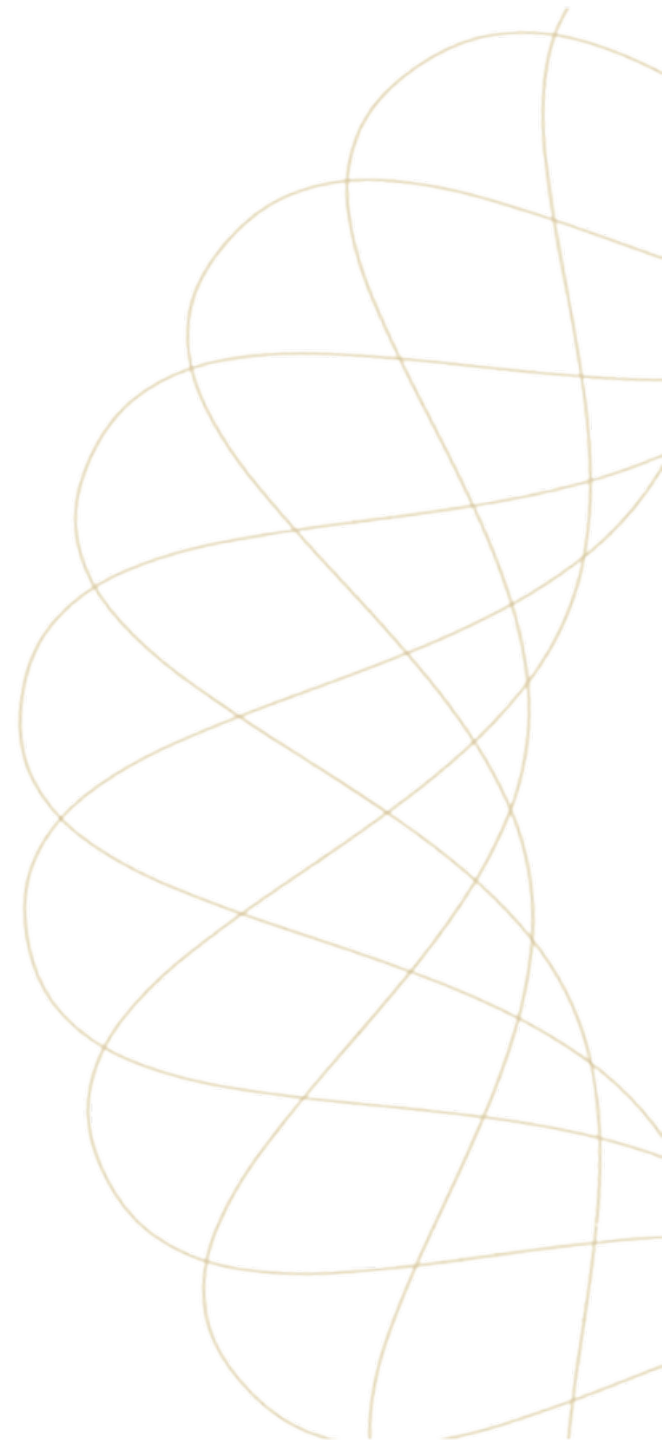


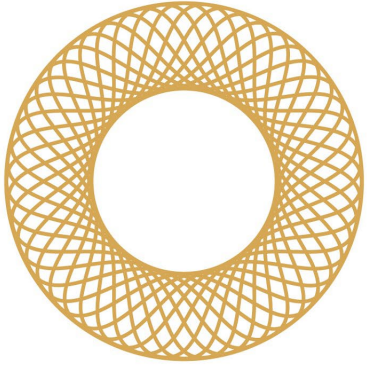
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Travel Law Conference

Manchester

25 April 2024





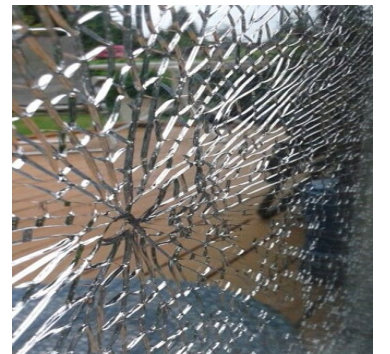
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Reform of the Package Travel Regulations - Are They Fit For Purpose?

*Lorna Badham
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Background

- Key feature of travel law landscape for over 30 years.
- Significant change is afoot, both at the EU and UK levels.
- Seems no one thinks the current regime is fit for purpose...
- Are the fundamental issues for PI lawyers being tackled?



- Original Directive from 1990.
- Major innovation. Offered claimants major advantages, especially regarding jurisdiction and applicable law. In keeping with EU drive to “bring rights home” to claimants (insurance cases, *Odenbreit*, employment cases, consumer contracts).
- Key concept of package being pre-arranged combination of at least two components when sold or offered for sale at an inclusive price.
- “Copied out” into English law – became PTR 1992.



- In 2015, European Parliament passed New Directive 2015/2032, superseded Old Directive and 1992 Regs.
- Entered into force 1 July 2018 - applies to sales made from that date.
- Buzzwords were “fitness for the digital age”.



- Big change - definition of package - old, singular definition gone.
- Replaced by a list of 6 (and, within that, sub-definitions).
Broader, but more complex.
- Combination of at least 2 different types of “travel services”, for the purpose of the same trip or holiday, if certain conditions are fulfilled.
- Liability regime unchanged.
- Post Brexit Day, it is retained EU law.



Reform in the EU

- In November 2023 the European Commission adopted a proposal for a Directive to amend the PTD.
- Why? The pandemic. Failure of Thomas Cook. An evaluation of the Directive showed that the PTD has “only partially met its objectives and the needs of consumers and traders, and that there is room for improvement and simplification”.
- Goal of revision is to “strengthen the level of consumer protection, at all times, including in the event of a major crisis, while improving the functioning of the internal market in the package travel sector”.
- All these changes must go through the European Parliament – it may all change – and be implemented.

- What is the Commission actually planning?
- No change to liability regime.
- Expanded definition of “package”. Any website (or retail store) on which it is possible to purchase 2 different travel services will now be within scope. It is even possible for a package to be formed where the customer buys the travel services from different websites.

Expanded definition will include following situations:

- The customer books travel service (e.g. flight) and then returns within 3 hours to same point of sale (i.e. website/store) to book different travel service (e.g. hotel) for same trip.
- As above, except customer was invited to book more travel services before the first booking was made. If, in this situation, the customer returns within 24 hours to book an additional travel service, this will be a package.
- The customer books travel service on one website, is then linked through to another website and buys second travel service. If the first website passes on *either* the customer's name, payment details, email address or other personal data to the second website, then this will be a package.

First type of LTA will be deleted as now subsumed within new package categories.

- Limitation on advance payments (25%)
- Refunds from travel suppliers (supplier will have to refund organiser within 7 days)
- Vouchers
- Crisis fund
- Insolvency protection
- Customer's right to cancel due to unavoidable and extraordinary circumstances
- Denied Boarding Regulations



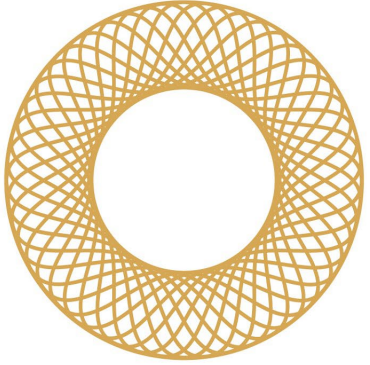
UK Reforms

- DBT call for evidence at end of 2023 to inform its proposed reform of 2018 Regulations.
- Do the 2018 Regulations strike the right balance between consumer protections and business freedoms?
- Liability regime not in sight – not yet.

- Seeking redress from third parties.
- Minimum price threshold.
- Compulsory insurance for UK tour operators.
- LTAs.
- Exclusion of business travellers.
- It is only a consultation at this stage.

Comment

- For the first time – significant divergence. Tour operators could soon be selling package into UK and EU under very different conditions.
- Some reforms hard to argue with – insurance, easier redress from third parties. Other not so - seems hard to justify minimum price requirement from a PI lawyer's perspective or removal of domestic packages.
- Focus really on financial claims, not PI?
- A fundamental question not tackled - did English law take a wrong turn interpreting the liability regime 20 years ago in *Hone* and other cases? Good argument for saying the Regulations envisage a regime much more akin to what is common in the domestic law of many EU countries, i.e. an obligation of *result*, effectively strict liability subject to defences (e.g. as in France – see *Committeri v Club Med* [2018] EWCA Civ 1889). Are we committed to this path now?



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Thank you for listening to our talk

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