Your essential insights into the latest in travel law

Issue 5 | Spring 2018

Travel Law TODAY

Brexit – less than a year to go
The future for the transport sector and VAT TOMs

Package Travel Regulations
An update on the new definitions, financial protection and checking your customer T&Cs

Data protection
Is technology the only solution?

Employment law
Update on the Taylor Review

Insurance
Protection or an unnecessary expense?

ABTA
The Travel Association

Contents

Welcome	2
Less than a year to Brexit: what's next?	3
Package Travel Regulations – working within the new definitions	5
Monarch – lessons to be learnt	7
Employment update – recent and upcoming issues to know	9
Data protection – does technology provide all the answers?	11
Travellers with disabilities – flying with medicines and medical equipment	13
Package Travel Regulations – updating your customer T&Cs	15
Package Travel Regulations – the future of financial protection in the UK and the EU	17
Insurance – protection or unnecessary expense?	19
VAT: TOMS – what does the future hold?	21
Upcoming ABTA conferences and events	22

Welcome

Simon Bunce, Director of Legal Affairs, ABTA

Simon is a solicitor and was appointed Head of Legal and Member Services and ABTA's Company Secretary in 2004, having joined ABTA as a Legal Adviser in 1996. Simon's team is responsible for the provision of legal and regulatory guidance to Members; the advice and alternative dispute resolution services to customers of ABTA Members; and for the operation and enforcement of ABTA's Code of Conduct.

Welcome to this fifth edition of Travel Law Today, which arrives in the middle of 2018, a year that brings more regulatory change for travel companies than we have seen for decades.

We have already been faced with the restrictions on payment card charges, which pose basic questions, particularly for travel agency business finances; the new data protection rules are just taking effect; and the implementation of new package travel and ATOL regulations is just a few weeks away.

We appear to have been given some breathing space until the end of 2020 as far as the full impact of Brexit is concerned but that simply buys some time to try to plan for a life outside the EU. Fundamental questions still need to be answered concerning VAT and employment rights, which remain real concerns for businesses in travel.

It is more important than ever to understand the challenges that lie ahead and, once again, we are extremely grateful to the ABTA Partners who have contributed to this edition tackling those challenges and I hope that these articles and the ABTA Conferences and Events programme will be a valuable part of your business planning.

Find all ABTA's resources on our Member zone. Visit abta.com/memberzone

Less than a year to Brexit: what's next?

Neil Baylis, Partner, K&L Gates

Neil is a partner at K&L Gates and heads the travel law practice. The firm is hosting this year's ABTA Travel Law Seminar. With offices in five continents, K&L Gates is ideally placed to provide a global perspective on international issues such as Brexit.

On 29 March 2017, Theresa May notified the UK's intention to withdraw from the EU and triggered the two-year process to define a new relationship between Britain and its 27 co-members of the European bloc. The UK Government's red lines on Brexit negotiations include ending the jurisdiction of the Court of Justice of the EU (CJEU) and leaving the EU single market. This article sets out the future consequences for the transport sector.

The negotiations are following three phases: an initial stage focusing on citizens' rights, a financial settlement and the status of the border with the Republic of Ireland. A second phase relates to a transition period after Brexit and thirdly, the agreement on the shape of a future EU-UK relationship. Last December the negotiators reached an agreement in principle across the three main topics initially under consideration and moved to the second phase of talks.

On 19 March 2018, EU and UK negotiators announced the terms of a Brexit transition phase. The transition period will start on the date of entry into force of the agreement setting out the terms of the UK's withdrawal from the EU and end on 31 December 2020. During this time, all EU rules will continue to apply to the UK as if it were a Member State, even though it no longer participates in the EU decision-making process. Therefore, the UK will remain in the single market and the status quo would be maintained for this time.

On 23 March 2018, the European Council (Council) adopted its guidelines on post-Brexit relations and agreed to start trade talks with the UK. A proper free trade agreement (FTA) can only be signed once the UK withdraws from the EU on 29 March 2019. However, the Withdrawal Agreement should ideally be finalised by October 2018, in order to allow enough time to obtain the endorsement of both EU and UK Parliaments before the UK's withdrawal.

Consequences, existing models and future options in the transport sector

Leaving the single market will have wide-ranging implications, for most economic sectors; transport is no exception.

From 1 January 2021, community licenses for the international carriage of passengers by coach and bus, as well as certificates of professional competence for drivers issued in the UK, will no longer be valid in the EU.

For rail, Brexit means the end of open market access to rail services and of mutual recognition for operating licences. On leaving, licences issued by the UK will no longer be valid in the EU-27 and railway enterprises wishing to continue operating in the EU would have to apply for an EU-27 licence.

"Leaving the single market will have wide-ranging implications for most economic sectors; transport is no exception."

With regard to maritime transport, British services will no longer benefit from the current EU law-based rights. These include cabotage, the transport of goods or passengers between two places in the same country by a transport operator from another country, and non-discriminatory access to provision of public maritime and port services. Moreover, operators providing transport services to passengers on inland waterways in the EU will have to be based in an EU Member State and make use of vessels registered in a member country, which has profound implications for river cruise providers.

Finally, the UK would cease to be covered by air transport agreements of the EU, e.g. the air agreement with Switzerland and to benefit from the European Common Aviation Area (ECAA) currently comprising EU members, plus Norway, Iceland, the Balkan countries and Lichtenstein. The UK will cease to participate in the European Aviation Safety Agency and UK-licensed airlines will no longer enjoy traffic rights to the EU market.

If we do not reach agreements on all of these issues, the solutions provided at international level are both fragmentary and inadequate. The WTO General Agreement on Trade in Services (GATS) applies to 12 sectors, including transport, tourism and travel. However, for road, rail and maritime transport, the EU has assumed limited obligations under the GATS and mainly allows the establishment of commercial presence in some FTAs, except for cabotage. As regards air transport services related to traffic rights, the GATS does not provide any international fall-back and the access to the EU market is regulated through bilateral agreements negotiated by the Commission within the framework of the EU external aviation policy. The GATS would be more favourable for tourism and travel-related services. The supply of these services within the EU is generally free from limitations and the presence of natural persons is unbound, although with specific requirements for tour managers.

Other international instruments that would offer a rather thin legislative framework include the 1949 Geneva Convention on Road Traffic, the Convention concerning International Carriage by Rail (COTIF), and the Maritime Labour Convention. It is also worth mentioning that a hard Brexit will not affect the management of the Channel Tunnel, since it operates under the terms of an intergovernmental agreement between France and the UK.

It seems highly unlikely that the regulation of the cross-border EU-UK transport will rely upon the international instruments set out above; British and European players have stressed several times the need to secure an agreement in this field. The negotiations will be tough but the guidelines of the Council on the future relationship adopted on 23 March leave the way open to an FTA covering goods and, to an extent, services. Furthermore, the guidelines suggest that any future FTA should include ambitious provisions on movement of people, as well as a framework for the recognition of professional qualifications.

The good news is also that transport and tourism are sectors where it is in both parties' interests to reach agreement that will limit disruption and allow for the continued flow of tourists and business across both sides of the border. Thus, the Council has urged for the preservation of the current levels of EU-UK connectivity and envisages a new framework for transport relations after Brexit. Specifically, it emphasises that a bilateral air transport agreement, combined with an aviation safety agreement, must be reached soon. However, concerning the future participation of the UK in the EU agencies, already undermined by the UK rejection of the CJEU jurisdiction, the Council reiterates that the EU will preserve its autonomy as regards its decision-making. Therefore, the UK will be bound by EU laws and regulations but will have no say in how they are framed.

"For rail, Brexit means the end of open market access to rail services and of mutual recognition for operating licences."

"The UK would cease to be covered by air transport agreements of the EU"

"With regard to maritime transport, British services will no longer benefit from the current EU law-based rights."

Package Travel Regulations – working within the new definitions

Joanna Kolatsis, Partner, Head of Aviation and Travel, Hill Dickinson LLP

Joanna is Head of Aviation and Travel at Hill Dickinson. Since qualification, Joanna has specialised in the aviation and travel industries. Her expertise includes aviation and travel law, commercial and regulatory matters including the Package Travel Directive and ATOL compliance and aviation regulatory issues including passenger disaster and crisis management.

The summer is almost upon us which, along with the sun, brings the long awaited Package Travel and Linked Travel Arrangements Regulations 2018 (PTR2) on 1 July.

Following delay by the UK Government, we have finally had the draft PTR2 handed down. While this does not mean an end to the ambiguity surrounding the practical implications of PTR2 and financial protection, we do now have a set of definitions to prepare for.

The key changes will centre on the business models you operate. While tour operators and traditional package organisers face changes, the most significant shake-up of the regulations is reserved for agents/retailers who may be organisers for the first time.

The new definitions give rise to challenges for travel agents, OTAs and travel service providers that will inevitably affect the way in which they operate and contract with other suppliers. PTR2 has also 'gifted' us the concept of a Linked Travel Arrangement (LTA), which has created much debate about what it is and who will be responsible for enforcement.

New definitions within the PTR2 include the following:

- Travel service
- Package
- Linked travel arrangement
- Traveller
- Trader
- Organiser
- Retailer.

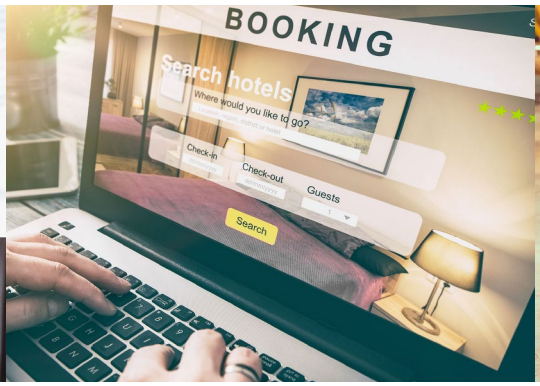
For package organisers

If you are already a package operator, while there are changes to consider, they should not have a significant impact on the way in which you sell your products. You will already be familiar with your obligations and liability exposure as an organiser. Flight-plus arrangers and OTAs however will have to familiarise themselves with a number of changes as 'new' package organisers (rather than LTA providers).

The most significant changes package organisers will encounter in line with the new definitions are:

The provision of pre-contractual information

Information must be provided to the consumer including the suitability of the trip for persons with reduced mobility, the language in which tourist services will be delivered, information about cancellation options before the start of the package and about compulsory or optional insurance including for costs of assistance and repatriation in the event of accident, illness or death.



Content of the package contract and documents to be supplied pre-travel
Specifics about the package must be documented including details of the organiser, liability for proper performance of the services and the obligation to provide assistance. Details about insolvency protection, complaint handling and alternative dispute resolution must be provided. However, the traveller must "communicate any lack of conformity" during the performance of the package.

Transfer of the package contract to another traveller
A controversial change allows travellers to transfer the holiday to another traveller up to seven days before departure. Any applicable costs should not exceed the actual cost incurred by the organiser.

There are further obligations laid down in the PTR2 for organisers: details regarding alteration of the package contract terms; termination of the contract and the right of withdrawal before the start of the contract; responsibility for the performance of the package; and liability for booking errors.

Traditional package organisers will undoubtedly implement the extension of the package travel regulatory regime with limited disruption. For businesses falling newly within the new regime, it will signify a sea change in operational processes.

For traders (including retailers)

New to PTR2 is the introduction of the term 'trader'. This opens up the PTR2 to a variety of business models and extends the supply chain to include travel service providers. Organisers fall within the definition of a trader but this is now an expanded term to include agents and anyone providing LTAs.

This also means extended liability under the PTR2:

- Traders must state whether they are offering a package or LTA and the corresponding level of insolvency protection
- In the case of an LTA, the trader must advise the traveller that an LTA is not a package and inform them of their rights.

All traders will therefore need to decide which model they will be operating under: organiser, LTA provider or retailer. Regardless of which route is chosen (and some businesses may operate a number of models), compliance with the regulations and clear communication to customers about the role you play in each scenario will be imperative. While package organisers will remain primarily liable, there is scope to draw other traders into claims where they are deemed to have played a role in organising the services provided.

For LTA providers

The advent of the LTA is perhaps the most controversial invention of the PTR2.
To come within the parameters of this new type of travel arrangement, the services must be separately selected and paid for. This can be at one point of sale or where an additional service is offered in a targeted manner by another trader and booked within 24 hours of the first service.

Note: If the customer's name, email and payment information is transferred to the other trader, this will lead to the creation of a package.

While not having the same liability as package organisers, LTA providers will have to provide insolvency protection to ensure that travellers are not out of pocket or stranded if they fail.

Working with the new definitions

The traveller's perspective – clarity to travellers about their arrangements will be key. Consumers should be under no illusion as to the services you are providing, in what capacity you are providing them and what you are/are not responsible for in the event that something goes wrong.

The liability perspective – traders can be drawn into claims if they are found to have participated in organising the travel arrangements. Defining the relationships within the supply chain will be vital. If you are planning to sell as an LTA provider, adherence to the criteria defining the parameters of an LTA will be critical.

The contract perspective – in order to ensure that roles are clearly defined, not only to consumers but also between service providers, clear contractual terms will be of paramount importance. Indemnities and assurances of assistance in the event of claims will be a key contract feature given the expanded roles and liabilities that may be invoked.

Monarch – lessons to be learnt

Rhys Griffiths, Partner, Fieldfisher

Rhys is a partner and the head of the travel group at Fieldfisher. He advises clients on compliance with travel regulation, as well as representing clients in commercial disputes. He acts for a broad range of tour operators, online travel agents and travel technology platforms.

Monarch's failure was a tragedy. One of the UK's oldest travel brands called in the administrators during the early hours of Monday, 2 October 2017. This led the CAA to undertake the "biggest ever peacetime repatriation" (Gov.uk, 2017) to bring home 110,000 customers stranded overseas at the time of the failure. Monarch's failure also led to the cancellation of more than 300,000 forward bookings and the redundancy of around 2,000 employees.

Monarch's failure sent shockwaves through the industry, with many travel companies incurring significant losses in refunding customers or sourcing alternative flights. This article summarises some (not all) of the "fallout", the lessons to be learnt and considers what might be different once the new Package Travel Directive (New PTD) is implemented on 1 July 2018.

The obligation to source alternative flights for pre-departure customers

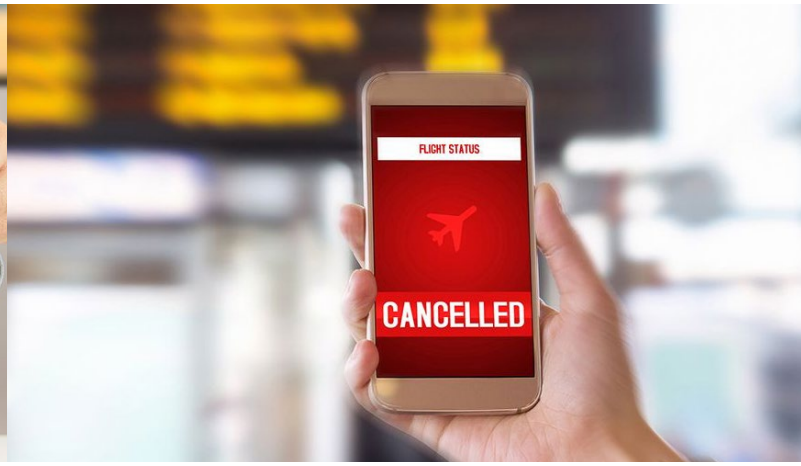
Monarch was a popular airline for travel companies to sell as part of a package or a flight-plus arrangement. However, this brought with it various legal obligations to refund or replace customer flights, without charge, when Monarch failed.

Package organisers had a choice whether to source alternative flights, if they were able to, to allow the holiday to continue, or to cancel the package. If the new flights amounted to a significant change to the package, or if the organiser cancelled, then the customer had to be offered a substitute package, if possible, or a full refund. The customer also had a potential claim for compensation for any losses suffered.

The position for flight-plus arrangers was not much better. They had to make "suitable alternative arrangements" for their customers. Where it was impossible to do so, or if such arrangements were rejected by the customer for good reason, the customer had to be given a full refund. Customers also had a potential claim for compensation.

These legal obligations gave rise to enormous practical challenges for travel companies. They had to deal with a lack of seat capacity on Monarch's routes, financial loss in having to fund the cost of replacement flights, a lack of regulatory guidance as to what "suitable alternative arrangements" look like, and the logistical headache of having to communicate with huge numbers of affected customers. It is a great testament to the travel industry that it was able to negotiate this chaotic landscape, to keep customers happy and to avoid Monarch's failure leading to a domino effect.

"Monarch's failure sent shockwaves through the industry, with many travel companies incurring significant losses in refunding customers or sourcing alternative flights."



The New PTD will introduce an expanded definition of a package such that the concept of flight-plus will disappear and, generally, become subsumed within the new package definition. The flight-plus obligations in the ATOL Regulations will be deleted. However, there would appear to be no equivalent obligations imposed by the New PTD on organisers to source replacement flights in relation to forward bookings, although there are similar obligations in relation to post departure customers and there are the contractual terms to be taken into account.

If a travel company does decide to offer a replacement flight, then the customer will have similar rights as before. If the travel company's booking conditions give it this flexibility, the customer will have to accept the new flight unless it can be said to amount to a significant change, in which case the travel company cannot insist that the customer accepts the change. Rather, the customer has the right to choose between: (i) accepting the change and seeking a price reduction (if the new package is of lower quality or cost); (ii) taking a substitute package (if the travel company decides to offer an alternative) and seek a price reduction; or (iii) cancelling the package with a full refund and seeking compensation.

There is, however, a serious anomaly regarding the question of whether organisers can simply choose to cancel the package and refund the customer their money. There were indications in the New PTD that this might be possible, but the draft UK regulations are silent on the point. One hopes that the long-promised guidance from BEIS will put the position beyond doubt.

How can travel companies recover their losses?

The failure of Monarch led to significant losses for travel companies in having to provide refunds or replacement flights. Some managed this risk by taking out Supplier Airline Failure Insurance (SAFI).

In what was a welcome surprise for some travel companies, the absence of SAFI did not mean that they were left without a means of recovering their losses. Rather, some travel companies were able to make "chargeback claims" through the corporate credit or debit cards used to pay Monarch. This included traditional credit/debit cards, and the more recent phenomenon of virtual pre-paid cards used by many of the larger travel companies. In all of these scenarios, travel companies were able to initiate chargeback claims through the Visa or MasterCard scheme rules, even though the travel companies were not consumers and so were not able to make claims under section 75 of the Consumer Credit Act 1974. This is a form of financial protection that every travel company should explore.

Confusion around flight-only sales

The legal obligations on flight-plus arrangers to make "suitable alternative arrangements" are set out in the ATOL Regulations 2012. The ATOL Regulations provide no protection for the consumer against the failure of the airline for flight-only sales. As the flight-only ATOL Certificate makes clear, the customer is only protected against the failure of the ATOL holder (i.e. the travel company). There is no protection if the airline fails.
However, the position regarding flight-only sales is far from clear and it was a source of great confusion following the failure of Monarch. So much so, in fact, that Which? decided to carry out a piece of investigative journalism on the issue in the immediate aftermath of Monarch's failure and subsequently ran a story with the headline "Travel agents get it wrong on ATOL". This is an issue, which could helpfully be clarified as part of the forthcoming ATOL Reforms.

The future

The failure of Monarch shined a light on the UK's regulatory system, particularly on where the risk of airline failures should sit. The unsatisfactory answer is that the risk lies with travel companies, the customer and the airline's merchant acquirer. This piecemeal approach does rather beg the question as to whether there could be a better system to cater for airline failures. The Government announced in the Autumn Budget 2017 that it would launch an independent review in the event of an airline or travel company failure. Let us hope that this does lead to a fairer and simpler system for the future.

"The New PTD will introduce an expanded definition of a package such that the concept of flight-plus will disappear and, generally, become subsumed within the new package definition."

Employment update – recent and upcoming issues

Rebecca Thornley-Gibson, Employment Partner, Ince & Co.

Rebecca works in the travel sector with European airlines, global tour operators and suppliers to the sector. Clients include membership organisations, travel technology companies and senior executives. Her work includes tribunal representation, in-house training, employee relations issues, company restructuring and exit arrangements.

Employment law changes create constant challenges for business. Alongside the case updates and new legislation, which do at least provide some clarity, a number of other issues need to be considered in the coming months such as GDPR compliance and an increasing awareness of equality rights. Above all, perhaps the biggest change in employment practices is one that is proceeding with a little more stealth and discretion than other headline grabbers is the Government consultation on the Taylor Review.

Taylor Review

In February 2018, The Department for Business, Energy & Industrial Strategy (BEIS) set out the Government response to the Taylor Review of Modern Working Practices published in July 2017. The Government has accepted a number of recommendations set out in the report and consultations have now been launched in the following areas:

- Employment status
- Agency workers
- Enforcement of employment rights
- Measures to increase transparency in the UK labour market.

The Taylor Review recommended greater clarity in respect of employment and worker status and the Government has accepted that:

- There is a lack of clarity and certainty surrounding the tests for employment status
- The current three-tier approach to employment status in employment rights (employee, worker and self-employed) should be retained
- An online tool could be useful in helping determine employment status.

The proposed changes to employment status would "represent the single largest shift since the Employment Rights Act in 1996", and the Government is seeking views on whether the recommendations will achieve their desired results particularly in relation to the realities of the modern labour market. The consultation will cover working time definitions for national minimum wage purposes and effective ways to achieve clarity for individuals and business on their employment and taxation rights and responsibilities. A change to employment status will affect the way in which travel companies contract with their labour resource and extended rights may result in higher employment costs.

The Review also made a number of recommendations designed to improve the working conditions of 'atypical' workers – anyone not employed on a conventional permanent basis such as seasonal workers and those in the gig economy. In particular, it highlighted the lack of transparency around contractual arrangements for agency workers and the use of umbrella companies for paying wages and making deductions. The Government proposes that:

- Any contract between a work seeker and an employment business should contain a 'key facts' document provided at the time of registration with an employment business to ensure that the work seeker fully understands what is being offered
- Umbrella companies or intermediaries could be brought within the scope of the employment agency standards inspectorate (EAS).

"Above all, perhaps the biggest change in employment practices is one that is proceeding with a little more stealth and discretion than other headline grabbers and this is the Government consultation on the Taylor Review."

A combination of a 'key facts' document, along with the regulation of umbrella companies and 'pay between assignment' (PBA) contracts would strengthen workers' rights. However, it is clear from the Government's response that workforce flexibility is considered a vital component of the UK's international attractiveness and is vital for business competitiveness. Again, the use of PBA contracts is likely to increase employment costs, which will undoubtedly be passed to the end user company.

The Government has agreed that vulnerable workers should be entitled to a wider range of basic employment rights. Specifically, the Taylor Review recommended that:

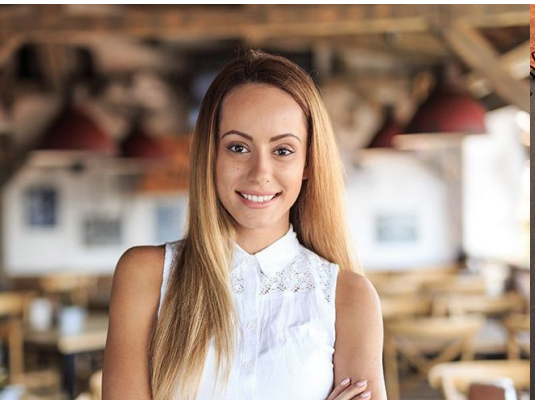
- HMRC should be responsible for enforcing a basic set of core pay rights (National Minimum Wage, sick pay and holiday pay) for the lowest paid workers
- The process of enforcing tribunal awards should be made simpler for employees and workers
- A naming and shaming scheme for those employers who do not pay employment tribunal awards within a reasonable time should be established
- Employment tribunals should be directed to consider the use of aggravated breach penalties where employers lose employment tribunal cases on broadly comparable facts.

The Government has clarified its plan to simplify the enforcement process for employment tribunal awards, which are obtained by workers following successful claims against their employer. The Government intends to introduce a scheme for unpaid employment tribunal awards. The Government is seeking views on the extent of non-compliance with workers' rights and entitlements to help determine how enforcement activity might best be targeted. With the latest employment tribunal figures showing a 64% increase in the issue of tribunal claims since the abolition of tribunal fees in July 2017, managing the risk of employment litigation will be a challenge for travel companies.

The Taylor Review noted that some employers use UK labour market flexibility to transfer risk to workers, and there is no corresponding benefit to the worker from the flexible arrangement. As a result, greater transparency around contractual arrangements between workers and employers in order to clarify their rights and responsibilities is recommended.

The Government has taken immediate steps to increase transparency by legislating to extend the right to payslips for all workers, and to improve the quality of the information provided on those payslips.

The timescale for new legislation may be several years away but reviewing how you contract with your staff now will minimise what could be a substantial pain point in a couple of years.



Data protection – does technology provide all the answers?

Alexandra Cooke, Commercial, IP and Technology Associate, Hamlins LLP

Alexandra advises businesses on intellectual property law, technology and commercial matters, particularly in the travel and leisure industry. She has experience advising senior management on the full ambit of cyber security and data protection matters.

The EU General Data Protection Regulation (GDPR), which came into force in May 2018, requires organisations to significantly change how personal data is handled. The changes in data protection legislation are a response to concerns regarding the impact of rapid technological development on the rights of data subjects. However, as well as being suggested by some as the problem, technology is also seen as a solution. However, can it provide all the answers?

Technological innovation at the heart of the GDPR

One of the key changes under the GDPR is the requirement for data protection to be designed into the fabric of business operations. Compliance will need to be the default modus operandi, especially for organisations dealing with large amounts of personal data, such as those in the travel sector. Adopting a "privacy by design" approach to data protection, and the use of "appropriate technical and organisational measures" to achieve compliance, are two catch phrases, which the travel sector will need to embrace for this new era of compliance.

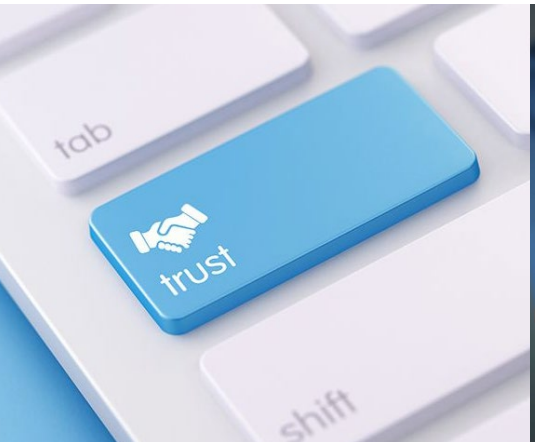
The GDPR, and guidance from the Information Commissioner (ICO), envisages technology will, largely provide the answers to achieving some of the key data protection principles.

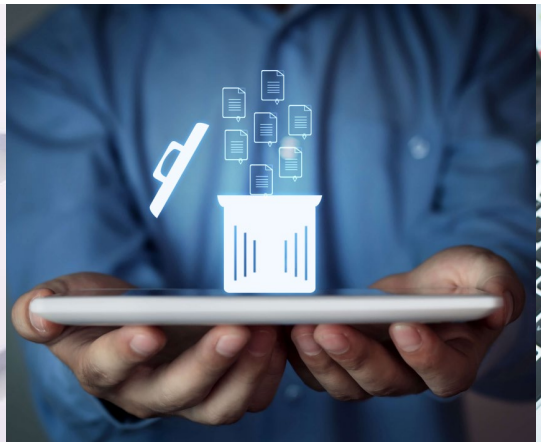
Controlling consents

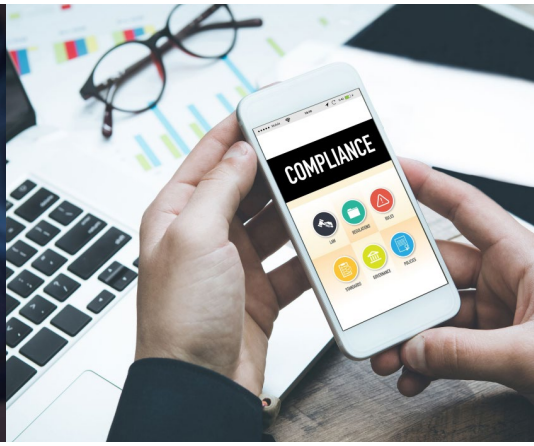
Consent is one ground that many organisations in the travel sector seek to rely on for processing personal data, particularly special category data, which the GDPR says, is more sensitive, and so needs more protection. Under the GDPR, consent can only be relied upon if it is given explicitly and unambiguously (for example organisations can no longer rely on pre-ticked boxes or silence). Data subjects must be able to withdraw their consent at any time, and fresh consent must be obtained from the data subject each time personal data is being used for a new purpose. The ICO recommends the best way for organisations to address these new requirements is to allow data subjects to manage their own consent preferences via an online portal. This is particularly relevant in the travel sector where customers will often have a user account and can easily opt-in (and, if they change their mind, opt out) to specified uses of their personal data, such as marketing and sharing with third parties (both of which require a separate consent).

Minimising personal data

Organisations will have to clearly identify how long they will keep each category of personal data (they must be able to justify this), and must delete all personal data exceeding this time limit. All personal data must also be accurate, up to date and necessary for the purpose for which it is being processed. Many organisations have vast quantities of personal data, which they no longer use, is likely out of date, and is now a huge liability. Database cleansing software can significantly speed up this spring-cleaning process. In addition, software can be used to ensure personal data is automatically deleted after a certain period, which is a step towards data protection by design and default.







Security and breach notification

The GDPR requires organisations to adopt "appropriate technical and organisational measure" to protect personal data such as the use of encryption, recording pseudonyms for a data record and other security technologies. When engaging third party data processors, organisations will also be required to ensure these third parties are contractually obliged to have certain security measures in place already. The ICO recommends organisations obtain a Cyber Essentials certificate, provided by the National Cyber Security Centre and a useful starting point for demonstrating a minimum level of security. Technology can also help organisations detect data breaches, identify impacted users and notify all relevant parties.

Data subject rights

Post May 2018, data subjects have greater rights to require organisations to disclose what personal information is held about them, and organisations will only have one month to deal with such requests (rather than the current 40 days). Technology, such as electronic filing systems and search functions on computers and handheld devices, can help organisations cope with a potential increase in such requests and to meet the tight turnaround time.

Accountability

Technology can assist with creating and maintaining accurate and instantly accessible records that will enable organisations to demonstrate, both to the ICO and to customers, they are complying with the enhanced data protection requirements.

Is technology the solution?

There is no doubt technology can be an invaluable tool to assist with GDPR compliance, however it will not provide all of the answers.

The first, and arguably most important, step towards compliance is to carry out a data protection audit to understand your organisation's current approach to data protection. For example:

- What categories of personal data does your organisation hold?
- What grounds do you seek to rely on for processing this personal data?
- How is personal data obtained?
- Where is it stored?
- How is it protected?
- What data protection policies and procedures do you have in place?

Technology will only help provide the answers to GDPR compliance if it is used to support a comprehensive and effective data protection strategy that is rooted in business reality and is based on co-operation and engagement across the whole organisation. Without people and policies, technology is only part of the solution.

Some things for organisations to think about prior to looking at technological solutions:

- Nominating a representative (ideally someone senior with oversight of the organisation) to take on the role of data protection officer.
- Engaging senior management and key stakeholders when devising your GDPR strategy. It is important the whole organisation is on board.
- Briefing all staff about the upcoming changes, their importance, and how the organisation is planning to tackle the changes (including a timeline).
- What training will you provide and to whom?
- Do you have clear and effective procedures for reporting data breaches and responding to subject access requests?
- Do you have a GDPR compliant privacy policy and cookie policy, and are these readily available (e.g. on the website)?
- Do you have a clear policy for engaging third party service providers? Do all agreements have the required data protection obligations?
- How will you regularly review and monitor the effectiveness of your GDPR strategy?

Travellers with disabilities – flying with medicines and medical equipment

Sue Barham, Consultant, HFW

Sue is a consultant in HFW's aerospace team. She is based in HFW's London office and handles regulatory and dispute resolution work for the aerospace and travel sectors. Her practice includes a focus on EU consumer, travel and passenger regulation, as well as safety regulation and licensing, in relation to which she specialises in advising airlines on their operations in to the EU. In addition, to regulatory matters, her practice also covers commercial litigation, dispute resolution and claims handling for aerospace clients.

There are certain fundamental regulatory principles aimed at avoiding discrimination against passengers with reduced mobility (PRMs) in relation to their access to air travel enshrined in EC Regulation 1107/2006.

Those principles are that an air carrier must not refuse to accept a reservation from, or to embark, a PRM, except where safety or aircraft type makes that impossible, and that a PRM is entitled to assistance, free of charge, at the airport and on board the aircraft in order to facilitate their carriage. That assistance covers help to travel through the airport and with embarkation and assistance on board including carriage of assistance dogs, facilitating specific seating requirements, and carriage of mobility and medical equipment. The quid pro quo of the obligations on the part of both airport and airline to provide free of charge assistance is that a passenger requiring special assistance is expected to give advance notice of their needs.

The obligations on airlines are not tightly defined and can lead to uncertainty on all sides as to their scope and extent. That is certainly the case in relation to carriage of medicines and medical equipment. The basic obligation on an airline is set out in Article 10 and Annex II, which state:

*"**Article 10:** An air carrier shall provide the assistance specified in Annex II without additional charge to a disabled person or person with reduced mobility departing from, arriving at or transiting through an airport to which this Regulation applies."*

*"**Annex II:** In addition to medical equipment, transport of up to two pieces of mobility equipment per disabled person or person with reduced mobility, including electric wheelchairs (subject to advance warning of 48 hours) and to possible limitations of space on board the aircraft, and subject to the application of relevant legislation concerning dangerous goods."*

'Medical equipment' is not further defined. Nor, unlike the obligation to carry up to two items of mobility equipment, is any guidance provided as to the quantity of such equipment that the airline must accommodate. The European Commission Interpretative Guidelines on the application of Regulation 1107/2006 acknowledge the lack of clarity:

"The Regulation recognises that disabled persons and persons with reduced mobility may need additional support in order to allow them to travel. Given the broad spectrum of passengers the legislation seeks to cover, there is no definition of medical equipment or the quantity of such items that may be carried (in contrast to mobility equipment, which is limited to two items). The circumstances of each request to carry such items should be considered on its individual merits taking into consideration the needs of the passenger."

"The Regulation recognises that disabled persons and persons with reduced mobility may need additional support in order to allow them to travel."

What is clear is that, provided the passenger gives advance notice of their needs, the airline is obliged to accommodate those needs. So, can any guidance be provided as to what, if any, limitations might apply, and what tips can be given to passengers and airlines where a passenger will need to travel with medicines or medical equipment?

Effective collection of information from passengers by operators, agents and airlines during or after the booking process can ensure that any need for special assistance, additional baggage allowance or for carriage of large quantities of medicine is known in advance. So that either airport staff, security personnel and/or airline staff are already briefed and ready to facilitate a passenger's needs. Good advance information can also identify whether the passenger wishes to travel with items which may strictly constitute dangerous goods and/or be subject to specific packaging or carriage limitations, or for which additional documentation may be needed. For example, oxygen carried by the passenger must meet international dangerous goods stipulations and, where more than 100ml of medicines are required (i.e. more than would normally be permitted through security), it will be legitimate to request a medical certificate. The key is to ensure that the requirement for medical equipment or medicine to be carried on board is notified clearly in advance thereby improving the passenger's experience and enabling the airline to meet its regulatory obligations.

Operators and agents have a key role in ensuring as far as possible that any special requirements their customers have are understood at an early stage so that they can be communicated to airlines and other service providers in good time. For example, passengers who may require assistance can be encouraged to complete ABTA's checklist for disabled and less mobile passengers at the time bookings are made – that can ensure that passengers needing extra assistance are properly attended to and that airlines and other providers are able to meet their own regulatory obligations.

Another fundamental principle of the obligation to facilitate carriage of PRM's on a non-discriminatory basis is that passengers should not be required to incur additional expense in order to make their needs known to the airline. Therefore, as a rule, it will not be appropriate to require a doctor's certificate to prove disability, or to require passengers to pay extra for telephone calls notifying their assistance needs.

"Effective collection of information from passengers by operators, agents and airlines during or after the booking process can ensure that any need for special assistance... is known in advance."

In the absence of any other guidance beyond Annex II of the PRM Regulation and the Commission's Guidelines, it is difficult to impose hard and fast rules and policies as to what medical equipment airlines will or will not carry, and in what quantities. The Commission Guidelines quoted above accept that each case should be considered on its merits and one can expect that a form of reasonable standard will apply to the airline's obligations in terms of the amount of equipment, which will be carried without charge, and the circumstances in which equipment will not be carried. That is likely to be the approach of the regulatory authorities also and is reflected in UK CAA's own advice to passengers travelling with medical equipment. Therefore, for example, there may be cases where aircraft capacity limits the amount of medical equipment, which can be carried, or safety reasons dictate that only a certain amount and type of equipment or medicines can be carried on board. It should be remembered however that the unqualified regulatory obligation is on the airline to allow carriage of medical equipment without limitation and so it will also be incumbent upon the airline to demonstrate why, in a particular case, it is acceptable not to carry (all) the equipment requested by the passenger. In devising any internal policies, airlines will generally therefore be advised to err on the side of caution in terms of the volume of equipment they will allow, accepting that in most cases, a passenger's requirements are not likely to increase the costs incurred by the airline or make a difference to the on-board capacity.

A final point to keep in mind, as noted by the Commission Guidelines, is that it is legitimate for an airline to draw a distinction between medical equipment, which must be carried without extra charge, and regular excess baggage carried by any passenger, including a PRM, for which it is legitimate to impose a charge.

"...it will also be incumbent upon the airline to demonstrate why, in a particular case, it is acceptable not to carry (all) the equipment requested by the passenger."

Package Travel Regulations – updating your customer T&Cs

Alex Padfield, Director, Hextalls

Alex acts for tour operators, travel agents and their insurers. He has nearly 20 years' experience in travel law and has been involved in a wide range of claims including multi-party actions, catastrophic losses, fatalities as well as jurisdictional disputes and recoveries. He has also advised on booking conditions, regulatory issues and other travel law issues.

The Package Travel Regulations have finally been published and they take effect from 1 July 2018. Now is the time to prepare, if you haven't already done so, and one of the main areas to consider is your terms and conditions. Make sure you review them as soon as possible, not only to comply with the new law but also to protect yourself and provide your customers with the best possible experience. There is a lot to consider and this article is intended to steer you in the right direction but you will need more than these comments to go through things thoroughly!

Keep it simple!

Your T&Cs will need to be in "plain and intelligible language". That is not only required by the PTRs but also under the Consumer Rights Act 2015. So, try to avoid legal jargon wherever possible and try to make your T&Cs as user-friendly as you can. A simple test is that if you do not understand them, will your customers?

About you

Do you understand where you fit under the Regulations? Many companies who currently act as agents will become "organisers" under the new Regulations. Does this apply to you? If you are going to be an "organiser" you will need full package travel terms and conditions. You will not be able to rely upon somebody else's and there are particular terms that must go in. It might be that you are an organiser on some occasions but also sell packages on behalf of somebody else. If so you will need to point customers in the right direction and make sure you do not use your package holiday T&C's with those customers.

Will you be selling linked travel arrangements? If so, your T&Cs should also reflect that.

Overall, make sure you understand your business model and that your T&Cs reflect it properly and avoid any possibility of confusion.

The holiday

Certain information must be included in your T&Cs. Some of it is the same as now but there are some new aspects including telling people whether any of the travel services will be provided as part of a group. This includes: the approximate size of the group; telling them what language will be used for any tourist services where it's important to be able to understand what's going on; and telling people whether the holiday is generally suitable for persons with reduced mobility. You will also have to be ready to give further information about the suitability of the trip taking into account a particular customer's needs, if asked. If you have agreed any special requirements with your customer, you will have to include those in the contract as well so be prepared to issue more paperwork if necessary.

It is very important to review clauses relating to alteration of the price and other elements of the package. You can only alter the price if you have reserved the right to do so in your T&Cs and there are limitations on what you can do. Likewise, you can only change other parts of the package if you have reserved the right to do so and again there are limitations. If you do not refer to this in your T&Cs, you will not be able (contractually) to make any changes even if they are insignificant.

Think about cancellation and amendment charges. You can charge reasonable cancellation fees but you must be able to justify the amounts charged. Any amendment costs will not be able to exceed the actual costs incurred in making the amendment and if you have standardised cancellation charges these will have to be based on the time of the cancellation before the start of a package and the expected cost savings and income from any future sale of the services which have been cancelled. If you do not have standardised cancellation charges any charge will have to be equal to the price of a package minus the cost of savings and income from any future sale of the travel services.

Think about this carefully as it is an area that you might be challenged on! This is not only required under the new PTRs but also under the Consumer Rights Act.

"Above all, perhaps the biggest change in employment practices is one that is proceeding with a little more stealth and discretion than other headline grabbers and this is the Government consultation on the Taylor Review."

If things go wrong

As we all know, things sometimes go wrong and you will need to ensure that the clauses relating to this reflect the PTRs. For example, do your clauses relating to liability mirror the new provisions? What about when you realise you will be unable to provide a significant part of the package after the holiday has begun?

Do you tell customers that if they think there is something wrong, they have to tell you quickly? In addition, who should they contact and how? That information will not be in your T&Cs but you should provide it elsewhere.

Think about whether you might want to limit your liability as you can do this in certain circumstances and it is often sensible, subject to reasonable limitations.

Summary

There is a lot to consider. One thing to bear in mind is that even if your T&Cs are not quite right or you do not manage to update them before the new law comes in, many of the rights under the PTRs will be implied into the contract anyway and consumers will still be protected, no matter what your T&Cs say! But this makes it all the more important to understand the changes and get your T&Cs right before then and will mean customer experience is enhanced.

Try to stay up to date with developments over the next few weeks and months. Just to make things more interesting, the CAA is also consulting on changes to the ATOL Regulations, which could also affect what you have to say in your T&C's. For example, the wording in relation to financial protection might change. ABTA will help you keep up to date on these issues.

"…try to avoid legal jargon wherever possible and try to make your T&Cs as user-friendly as you can. A simple test: if you don't understand them, will your customers?"

Package Travel Regulations – the future of financial protection in the UK and the EU

Stephen Mason, Senior Partner, Travlaw LLP

Stephen is the senior partner at Travlaw LLP where he advises hundreds of travel companies on all aspects of travel law. He is co-author of the textbook Holiday Law, and ranked as a top travel lawyer in the UK by Chambers Directory of the Legal Profession 2018.

One of the most radical changes in the new Package Travel and Linked Travel Arrangements Regulations 2018 (PTR), in force from 1 July 2018, concerns the regulatory system for financial protection of prepayments made by consumers (and repatriation for those stranded abroad when insolvency strikes).

The current law requires package organisers to be regulated in each country where they sell or market to consumers. The downside to this is that companies wanting to expand and sell in other European countries need to jump through all the regulatory hoops in each country. The upside should be that UK consumers are confident that the holidays they buy are protected by ATOL, or by bonding through ABTA, etc. although LowCostHolidays was a warning that consumers are not always as alert to what they are buying, as they should be.

From 1 July 2018, all this changes. Regulation will now be in the country of establishment of the holiday organiser. So an ATOL, for example, will allow a British company to sell packages to consumers throughout the EU (see new Reg 9C being inserted into the 2012 ATOL Regulations). This presents a real opportunity to companies for expansion. The CAA is gearing up for that change. Non-flight packages will continue to be protected by bonds, insurance or trust accounts, but the same applies there too – the protection enables trans-EU sales.

Note that there are new requirements for Trust Accounts, however. First, there is a new rule that the Trustee must be independent (Reg 23(3)); about time too! Secondly, Reg 24 requires that any package holiday protected by a Trust Account, and involving carriage of passengers, must also be backed up by insurance which covers the cost of repatriation, and, if necessary, accommodation pending the repatriation. We hope there is not the following problem: one reason why Trust Accounts have been popular is because of the difficulty of finding insurance products on the market which provide financial protection. Assuming such products have now become available, why not just have insurance, instead of the having the hassle of both insurance and Trust Account? In addition, if such policies are not available, how will Trust Accounts survive? Hopefully, the market will provide solutions.

Naturally, the same Package Travel Directive enables German (for example) companies to sell to Brits on the reciprocal basis. It theoretically also means that consumer protection might be weakened if companies forum shop around to find the cheapest place to be regulated.

Consider:

a. ***Do companies actually want to move their head office to some distant EU Member State?***
b. ***The European Court of Justice case of Rechberger v Austria in 1999 (Case C-140/97) shows that if a Member State permits inadequate financial protection, the State is itself liable to consumers for any shortfall***
c. ***It remains to be seen how consumers needing repatriation fare in dealing with a foreign regulator***
d. ***Companies based outside the EU do not get the benefit of these new rules, but must seek regulation in each State they sell in, as per the existing law. Agents who sell their products risk making themselves liable.***

"…consumer protection might be weakened if companies forum shop to find the cheapest place to be regulated."

Following the issue of consultations from the DfT and the CAA in February 2018, we now know rather more about how financial protection will work. Consider these points:

- We have known that business travel will be taken out of regulation, but the requirement for such travel to be pur suant to a "general agreement" has been a puzzle – what is one of those exactly? We know that it must cover more than a one-off travel sale. Now we know that the CAA proposes to issue a list of terms, which must appear in such an Agreement for it to qualify for exemption. This concept is reminiscent of the compulsory terms in ATOL Agency Agreements, though the detail will differ. We await details.
- An ATOL will now be required even if a flight, which is part of a package, is sold as 'Agent for the consumer'
- Flight-plus is being abolished. Most flight-plus arrangements will be packages under the new law; a few may be Linked Travel Arrangements (LTAs), see below.
- It will be made clear that 'Agents for ATOL holders' selling packages that they organise themselves under the new law, require their own ATOL.
- The powers of the CAA to enforce the law are currently either a criminal prosecution or revoking/suspending/amending the ATOL. To add flexibility, the CAA will also be given powers to take civil action, e.g. for an Enforcement Order (a type of injunction, in effect) under the Enterprise Act 2002.
- LTAs will, generally be taken out of the ATOL scheme. This is to avoid consumers being misled into thinking they are getting full ATOL protection. Therefore, traders need to protect LTA's via bonds/insurance/trusts. However, the flight element will still be required to be protected under the ATOL Regulations as a seat-only sale unless the flight provider is an airline or the sale is exempt from the ATOL regulations, for example as an airline ticket agent sale. In truth, the financial protection of an LTA is weak, limited to the money paid to the company facilitating the sale of the various services, to guard against his/her own insolvency only (not suppliers' insolvency), and only for the time that the company actually holds the money, which could be seconds only.
- There are numerous, fairly minor, changes proposed to ATOL Standard Terms, but most significantly, websites will have to give much more information about identified flights e.g. whether the flight is direct or indirect, the name of the airline, details of times and any connections. Some of these are controversial; many travel companies believe that naming the airline will send consumers rushing to the airline's own site to compare prices, for example.
- Finally, after all this has bedded in from 1 July, it is proposed that at a later date the issue of ATOL Certificates will be taken out of the hands of travel companies, and the CAA will issue these themselves. This would (allegedly) give consumers confidence that the ATOL protection is genuine, and provide the CAA with much better information to carry out repatriations in the event of insolvency of the ATOL holder.

Therefore, a massive change is upon us, starting from 1 July. Complaints that this is far too short notice for the industry to achieve full compliance in time have been met by the CAA saying they will be "understanding" in the early days after 1 July, as long as they can see that companies are genuinely moving towards compliance. What sort of law is that?

I have also ignored the impact of Brexit on all the above, as no one knows precisely what will happen. Clearly, all the above law is coming into force in the UK on 1 July, but let us hope the ability to sell cross-border will be maintained after Brexit.

"Following the issue of consultations from the DfT and the CAA in February 2018, we now know rather more about how financial protection will work..."

Insurance – protection or unnecessary expense?

Dr Julian Morris, Operating Partner, Plexus

Julian is a partner in the casualty/travel and medical negligence teams. Based in London, he qualified as a solicitor in England and Wales in 2002 and as a medical practitioner in 1985. He acts on behalf of tour operator and healthcare providers, insurers and brokers in all aspects of litigation and regulatory matters. He also manages multi-jurisdictional claims handling several schemes for leading insurers and a leading tour operator.

One might suggest that in this modern world, we cannot function without insurance. That is certainly true in those areas where insurance is required by law, e.g. car insurance. There are many other types of insurance that are completely optional like home contents, travel and health and life insurances. If one decides not to purchase insurance, making that decision could have risky consequences with serious financial implications. Equally, purchasing and then not following one's obligations could have the same unwelcome result.

As many as two in five people (38%) – 9.9 million Brits – who travelled abroad in the past 12 months holidayed without the right travel insurance, took part in activities which may not have been covered, or didn't have any insurance at all, according to new research from ABTA.

However, what of the tour operators, travel agents, hotels and excursion providers? Do they need insurance? And, once obtained, "can I just forget about it?" Alternatively, perhaps the better question is "what do I have to do with the insurance?"

A policy's conditions regulate the manner in which the policy operates. Despite the potential for being jaw-droppingly boring, the difference between being covered and not (having paid the premium), might be whether you have a viable business or not, and solely because you failed to understand the significance of a condition.

There are several types of condition that give an underwriter, their solicitors or insurers the opportunity to limit any payments made under the policy. In essence, a condition must be complied with by one party or another to the contract.

The effect of any breach, on your part as the purchaser of the insurance, depends on whether the condition is a:

- Condition Precedent: things to be done before the insurance contract is concluded
- Condition Subsequent: things to be done during the life of the policy
- Condition Precedent as to liability: things to be done before the insurers are liable to pay out any sums under the policy
- Condition Precedent to the bringing of any claim: things to be done after the insurer agrees to cover being in place.

As a rule, the insurer must prove or establish the breach of a condition and, by way of example:

- The Condition Precedent as to liability – requires a proper notification of the claim to the insurer
- The Condition Precedent to the bringing of a claim – may require you for example, as the insured, to provide all assistance to insurers pursuing subrogated rights against suppliers.

From the insured policyholder's perspective, it could be argued that it is in your best interests to keep the number of condition precedents to a minimum but where they are present; you should identify and understand the potential consequences of any breach. As explained above, notification of a claim is a precedent to liability i.e. a policyholder has to meet the condition for the insurance to kick in otherwise underwriters/insurers may decline the cover.

Deciding whether an incident or event should or should not be notified, and perhaps even more fundamentally, making sure it reaches the right person internally are central issues. It is imperative within any travel company that someone (or in larger companies, a team) co-ordinates the insurance notification process; staff must know who that person or team are and how to contact them and forward details to them. In essence, so that the correct person is made aware of an incident or event, see Kidsons vs Lloyds Underwriters.

It is then up to that person or team to decide whether the incident or event is likely or may give rise to a claim. Once an insured is aware of a claim, the clock starts ticking for notification purposes. Failure by the insured to notify the insurer that may have two consequential results: firstly, that the claim is rejected and secondly, that any future policy may be void for non-disclosure of material facts i.e. the occurrence of the claim.

So, what is the timing of the notification? This depends on what the policy says:

- 'Immediately'? – two days has been deemed sufficient (Lee on Realty v Kwok Lai Cheong (1985)), 17 days too long (Brook v Trafalgar Insurance Co Ltd (1946))
- 'As soon as possible'? – three months is too long (.HLB Kidsons)
- 'Within a specified number of days'? – time periods are usually strictly enforced (Adamson & Sons v Liverpool and London Globe (1953))

"If one decides not to purchase insurance, making that decision could have risky consequences with serious financial implications."

From the insurer's perspective, if they consider there is a potential breach of the notification provision, they should not waive their rights but will reserve them; otherwise, they would not be able to rely on the policy point: the condition precedent as to liability.

That period of reservation will allow insurers a reasonable time to understand the claim and reach a decision. In Cosmos Villa Holidays PLC vs Trustees of Syndicate 1243 (2008) the reasonable period allowed was two months.

If the reserved rights are enforced, or indeed the claim is rejected as being out of time (e.g. notification is over a policy's strict 30-day period for notification), the resultant defence of the claim and associated costs together with any resulting press coverage will fall to you, as the insured, to pay. Those costs come out of your bottom line and, of course, are in addition to the costs of putting the original insurance in place.

So, upon reflection, whilst taking out insurance is an expense and requires an internal understanding and organisation of processes so that you can respond properly to any potential claim, a proper understanding and implementation of the policy requirements will provide protection for what might otherwise be an expensive trip into self-insurance.

"Once an insured is aware of a claim, the clock starts ticking for notification purposes."

VAT: TOMS – what does the future hold?

David Bennett, VAT Consultant, Elman Wall Bennett

David runs his own consultancy Elman Wall Bennett which specialises in TOMS and other VAT issues affecting the travel sector. David advises ABTA and represents the Association on the Fiscal Committee of ECTAA (the Brussels based body representing European travel agents and tour operators).

We must start with Brexit. VAT is a European tax and its implementation in all Member States is based on binding EU directives and regulations. Inevitably, therefore, leaving the EU means there is a lot of potential for change. Having said that, there is no reason to think the treatment of domestic transactions will change much in the short to medium term, but international transactions are a very different proposition and this, of course, is where we find travel. In March 2018, the UK and EU announced the terms of the proposed implementation phase to run until 31 December 2020 and it was agreed, conditionally, that the UK will continue to be bound by EU rules and regulations. This means EU VAT rules will continue to apply in the UK until the end of 2020.

However, on 1 January 2021 things may get interesting. I think it is unlikely that the way VAT applies to agency commissions will change very much but the requirement to submit the unpopular EC Sales Lists will presumably end. TOMS though is a different story. If the UK ceases to be bound by EU law, the EU TOMS regulation would have no application in the UK and it is easy to foresee a situation in which we simply do not have TOMS any more. Given its reputation for complexity, many may think that a good thing. But what would replace it? Moreover, how would the Treasury replace the lost revenue?

One possibility – but not a popular one – would be for UK tour operators to register and pay VAT in each Member State in which their holidays etc. are enjoyed. Clearly, this would be an onerous task for most but is no more than the application of basic VAT principles. Indeed, it is the very situation that TOMS was designed to ensure this would not be required. So, leaving the TOMS arrangements could expose tour operators to complexities, which have not existed for many decades since the TOMS rules were agreed. By the same token, the UK may require foreign tour operators to pay UK VAT when selling UK holidays.

Many would welcome avoiding the above scenario and ABTA has been discussing this with the Government. It was encouraging to note that the potential complications that leaving the EU VAT area could create were included in a report in April by the European Scrutiny Committee. This report also suggests that the Government's long-term objective is "continued alignment with EU legislation beyond the transition to maintain the freest and most frictionless trade possible". Furthermore, the Treasury Select Committee has invited submissions on the effects of Brexit on the UK VAT system. ABTA will be participating and will take this opportunity to reinforce the concerns we have made previously to the Government.

The meaning of agency

The distinction between agent and principal is hugely important for travel businesses in many respects. VAT is one such area. For example, TOMS cannot apply to a business acting as a disclosed agent. However, whether a business is an agent or not can be a very grey area. The situation has been clarified significantly, however, by the Secret Hotels 2 case (formerly known as Med Hotels) and five further disputes, which have followed. These decisions have helped to remove many of the grey areas but are very unpopular with HMRC. Despite losing all the cases, HMRC fights on and now wishes to see the matters involved referred to the European Court of Justice. It is expected that there will be a hearing to decide on the referral in late 2018. We may yet end up with a different position to that adopted by the UK courts.

The EU's review of TOMS

The European Commission's study on TOMS looked at the problems caused by differing implementations of the scheme and considered ways in which the rules might be modernised. We do not know yet how the Commission will respond but changes to the scheme throughout the EU are a possibility. Of course, we have to assume that the UK will not be a Member State by the time any new law in this area is agreed and so it is tempting to think we would be unaffected by such changes. However, that may not be the case. First, as described above, the UK may remain aligned with EU VAT law. Second, and more fundamentally, one of the key findings of the study is that equality of treatment of EU and third-country travel suppliers should be ensured. This could involve the payment of EU VAT by third country travel business in various scenarios, an important consideration given the UK's future status as a third country.

ABTA CONFERENCES & EVENTS

ABTA runs a diverse programme of events, from large national conferences to practical seminars and regional meetings. Our aim? To keep the travel industry up-to-date on important issues, such as policy, regulation, law, finance, crisis management, health and safety, and complaints handling

Confirmed dates for 2018	Date	Location	
An Introduction to Crisis Management	13 June	London	Seminar
Solo Travel Conference	21 June	London	Seminar
Delivering Sustainable Travel	26 June	London	Seminar
Travel Matters	27 June	London	Conference
Advanced Complaints Management	28 June	London	Seminar
A Complete Guide to VAT and TOMS in Travel	3 July	London	Training day
Future Talent in the Travel Industry	3 July	London	Seminar
A Beginners Guide to Travel Law	5 July	London	Training day
Complaints Handling Workshop	10 July	London	Workshop
Communicating FCO and other Travel Advice to Customers	11 July	Manchester	Seminar
Advanced Social Media in Travel	20 September	London	Training day
Group Travel and Tours	26 September	London	Conference
Business Travel Risk Management Seminar: Protecting Your Travelling Employees	3 October	London	Seminar
The Over 50s Market in Travel	29 November	London	Conference

Register online at abta.com/events

ABTA Members and Partners benefit from discounted rates

Tel: 020 3693 0199 **Email: events@abta.co.uk** **@ABTAevent**

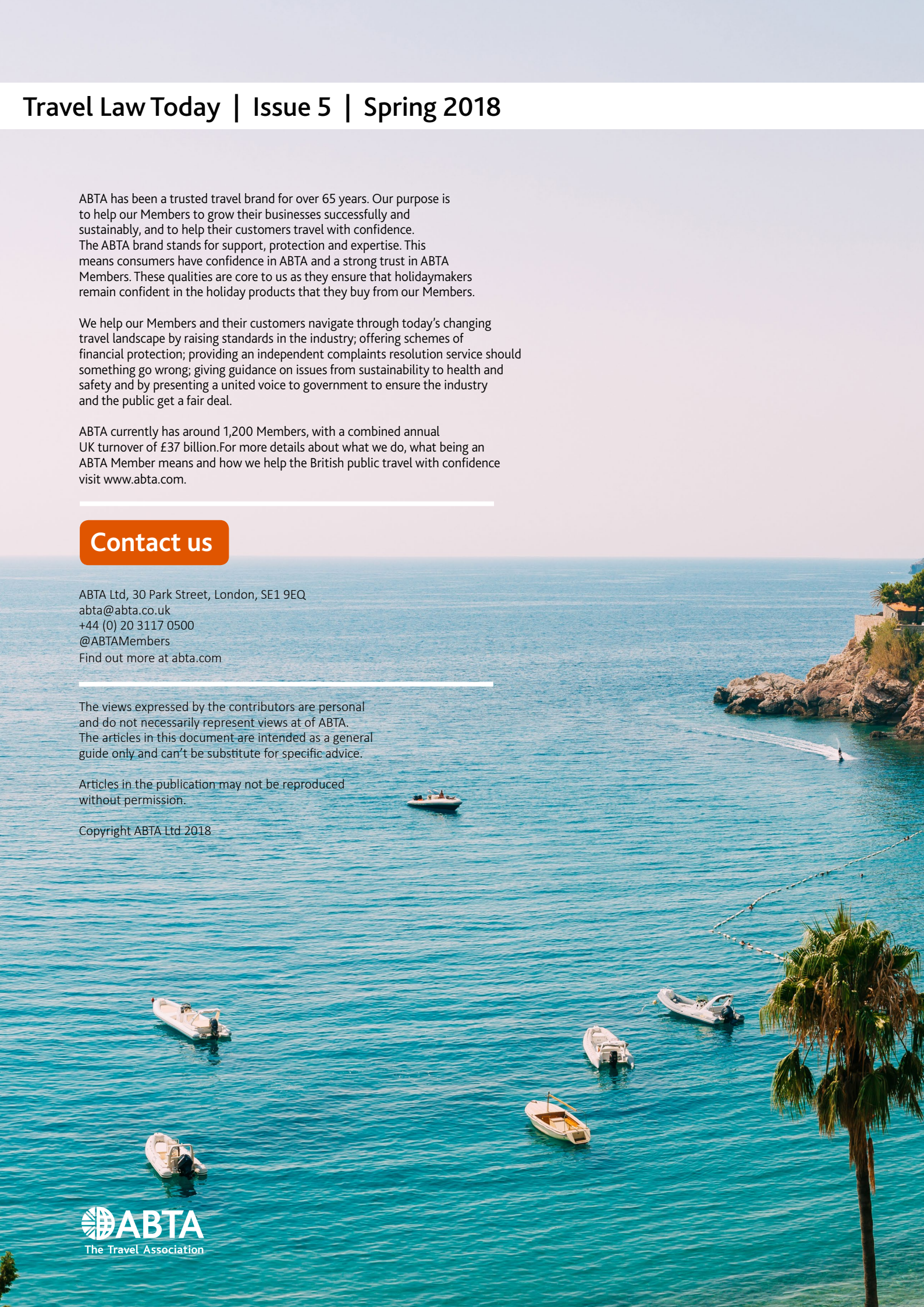
ABTA has been a trusted travel brand for over 65 years. Our purpose is to help our Members to grow their businesses successfully and sustainably, and to help their customers travel with confidence. The ABTA brand stands for support, protection and expertise. This means consumers have confidence in ABTA and a strong trust in ABTA Members. These qualities are core to us as they ensure that holidaymakers remain confident in the holiday products that they buy from our Members.

We help our Members and their customers navigate through today's changing travel landscape by raising standards in the industry; offering schemes of financial protection; providing an independent complaints resolution service should something go wrong; giving guidance on issues from sustainability to health and safety and by presenting a united voice to government to ensure the industry and the public get a fair deal.

ABTA currently has around 1,200 Members, with a combined annual UK turnover of £37 billion.For more details about what we do, what being an ABTA Member means and how we help the British public travel with confidence visit www.abta.com.

Contact us

ABTA Ltd, 30 Park Street, London, SE1 9EQ
abta@abta.co.uk
+44 (0) 20 3117 0500
@ABTAMembers
Find out more at abta.com



ABTA
The Travel Association