



The Forum of Complex Injury Solicitors (FOCIS)

Response to

**The Department for Business and Trade's Call for Evidence – Package Travel Legislation:
Updating the Framework**

December 2023

About us

The Forum of Complex Injury Solicitors (FOCIS) are a group of pre-eminent solicitors who specialise in acting for seriously injured people in personal injury and clinical negligence claims. The objectives of FOCIS are to: -

- Promote the highest standards of representation for claimants with life-changing injuries;
- Increase understanding in the wider community of issues which arise for those who suffer serious injury;
- Use members' expertise to promote debate and improvements to the law and legal process, and
- Share knowledge and information among members of the Forum.

See further www.focis.org.uk

Membership of FOCIS is intended to be at the most senior level of the profession. The only formal requirement is that members are recognised by their peers as having achieved a pre-eminence in one or more specialist types of serious injury claims. We currently have 25 members, including members from England, Scotland, Wales, and Northern Ireland. Eight of the past presidents of APIL are members or Emeritus members of FOCIS. Firms represented by FOCIS members include:

Anthony Gold	Hugh James
Ashtons Legal	Irwin Mitchell
Balfour + Manson	JMW Solicitors
Bolt Burdon Kemp LLP	Leigh Day
Dean Wilson LLP	Moore Barlow
Digby Brown	Osbornes Law
Fieldfisher	Serious Law
Fletchers	Stewarts
Freeths	Switalskis Solicitors
Hodge Jones & Allen	Thompsons Solicitors

Introduction

FOCIS is grateful for the opportunity to respond to the Department for Business and Trade's call for evidence regarding proposals to reform the Package Travel and Linked Travel Arrangements Regulations 2018 ('the Regulations'). In summary, we recognise the importance in ensuring the travel sector recovers from the effects of the Covid-19 pandemic, however, we are concerned that the proposals set out by the Department for Business and Trade would adversely affect the vital rights and protections granted to consumers under the Regulations.

In line with the remit of our organisation, we restrict our responses relating to our members' experience, practices, and procedures relating to complex injury claims only. We will defer to others to respond on the impact relating to other classes of case.

How rules should apply to UK-only package holidays

Question 1: What consumer protections are particularly important for those holidaying in the UK and why?

We are of the view that most consumer protections contained within the Package Travel and Linked Travel Arrangements Regulations 2018 are particularly important for those holidaying in the UK as they enable consumers to make informed decisions about their holiday as well as ensure consumers have means of redress when a claim arises.

Of note we believe the provisions found under Part 2 of the Regulations in relation to the information to be provided to a consumer before concluding a contract are vital in enabling consumers to make informed decisions when purchasing their holidays. Furthermore, we believe the provisions found under Part 4 of the Regulations in relation to the performance of the package are important in providing and enforcing protections where there has been non-compliance with a package contract, especially in circumstances where travel services have been provided by a third party. The ability for consumers to pursue the organiser for a remedy due to lack of compliance by a third party grants further certainty to those holidaying in the UK.

We would also like to emphasise the lack of any obligation on travel organisers to maintain liability insurance. We believe this seriously undermines the protections granted under the Regulations and presents a significant risk to consumers who have booked a package holiday. This can be evidenced in the collapse of Thomas Cook in 2019 which left injured consumers, uncertain as to whether they would receive compensation due to their treatment as unsecured creditors. We invite the Government to plug this gap and impose a compulsory obligation on travel organisers to maintain a prescribed minimum level of liability insurance and a direct right of action against that insurer. This is necessary to maintain consumer confidence in the travel sector and provide an effective means of redress even if the organiser becomes insolvent or is at risk of insolvency. At the very least the requirements should be supplemented to require confirmation of the name of the insurer of the organiser and the level of insurance cover (for each consumer's claim not collectively/aggregated).

Question 2: Do you think that:

- a. All domestic-only arrangements should be exempt from the Regulations; or**
- b. Domestic-only arrangements that do not include travel should be exempt from the Regulations; or**
- c. Domestic-only arrangements should continue to be in scope of the Regulations as they are now?**

Please provide an explanation for your answer, citing any relevant data where possible.

We do not agree that all domestic-only arrangements should be exempt from the Regulations. We are of the opinion that removing the protections granted under the Regulations would adversely and disproportionately affect the most vulnerable and disadvantaged members of our society. As noted above the protections granted to consumers under the Regulations help to maintain trust and confidence in the travel sector by providing certainty to consumers. The proposals do not take into consideration the likely purchasers of package holidays who are likely to be those who cannot travel internationally due to accessibility issues or financial hardship. Although as noted in the proposal there are alternative means of redress in the proposed situation where the Regulations do not apply, these alternative arrangements are not without concern. Firstly, s.75 of the Consumer Credit Act 1974 can only be used in circumstances where a holiday has been purchased with a credit card or some other form of credit funding. We note this provision excludes those who do not or who are not able to obtain a credit card from seeking redress from their bank in the alternative, and who, as mentioned above, are more likely to be the most vulnerable and disadvantaged members of our society. There is also the concern that many consumers are unaware of the difference between debit and credit cards, let alone the differing levels of protection afforded when purchasing services with one or the other. It is not unusual for travel agents to seek payment of the holiday cost to a subsidiary whilst the holiday is provided by a different subsidiary or member of the group. Whilst common practice this does take the transaction outside of the supplier-creditor-consumer relationship required by the Act and thus deprives the consumer for this protection. As does the payment by a spouse on a supplementary card within the family account.

Furthermore, we also note that earlier this year the Government indicated an intention to undertake an “ambitious overhaul” of the Consumer Credit Act, calling into question whether this vital consumer protection granted under s.75 will continue to remain.¹

Concerning the question as to whether a distinct framework for domestic package holidays in addition to the Regulations for international package holidays could potentially operate, we are of the view that such an arrangement would ultimately cause confusion for consumers and a loss of trust and confidence in the travel sector. As a result of the UK’s multiple legal jurisdictions there are concerns regarding how a claim would be commenced if a consumer in one jurisdiction, for example, Scotland, booked a holiday to and was seriously injured in another, for example, Wales. There would be ambiguity surrounding jurisdictional issues such as where to commence the claim as well as practical implications for consumers, namely increased costs in retaining a lawyer who specialises in that jurisdiction. Furthermore, we cannot see the rationale behind why those holidaying in the UK should have less protections than those crossing the channel from England to France or Belgium.

¹ [Reform of the Consumer Credit Act: consultation - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/consultations/reform-of-the-consumer-credit-act)

For the reasons set out above FOCIS is strongly of the view that domestic-only arrangements should continue to be in the scope of the Regulations.

Question 4: Would removing domestic packages from the scope of the regulations support businesses to:

- a. offer more choice?
- b. offer lower cost options?
- c. both?
- d. neither?
- e. something else?

Please explain your response, setting out how and to what extent this reform could lead to benefits or detriment to business.

We are highly doubtful that the proposal to remove domestic packages from the scope of the Regulations would support businesses to offer more choice or lower cost options. We note there is no credible evidence to substantiate any such benefits.

Conversely the removal of domestic packages from the scope of the Regulations would have quite obvious detrimental impact on consumers, with the potential for practical and legal issues, such as the consumer having to pursue one or more domestic service providers instead of the tour organiser/operator, who they actually contracted with. This would not only cause further delay for the consumer in terms of reaching a remedy, but it could also increase costs and limit access to justice, especially for vulnerable consumers such as those suffering from complex injury.

Setting a minimum cost threshold for rules to apply

Question 6: Do you think that a minimum cost threshold should be set below which package travel rules should not apply? Please explain why and what impact you think these proposals could have on businesses and consumers. Please cite any evidence that informed your position.

FOCIS strongly opposes the concept of a minimum cost threshold, which would disproportionately affect the most vulnerable and disadvantaged in our society. This patently unfair proposal fails to consider that consumers who buy cheaper packages may not have the financial means to absorb a financial loss or pay for legal representation in the event of a claim and therefore are the most in need of the protections granted under the Regulations.

We have not seen any evidence which suggests a correlation between the price of a package holiday and the risk of suffering a catastrophic injury. We are, therefore, concerned that the implementation of a minimum cost threshold could significantly restrict access to justice. For instance where a consumer on a lower income has purchased a package holiday falling under the de minimis threshold, and has subsequently suffered a catastrophic injury during the performance of the package contract, they may be unable to afford or otherwise secure legal representation to pursue a claim against a service provider whose identity, solvency and/or insurance might well be uncertain.

Health and safety standards, coupled with related rights of legal redress, ought to be universal irrespective of the cost of a package holiday. We are concerned that an introduction of a minimum

threshold may encourage some holiday providers to seek to compromise such standards to try and keep the price below the threshold.

Regulation of Linked Travel Arrangements

Question 8: Do you think the regulatory position on linked travel arrangements should be:

- a. kept as it is; or**
- b. simplified; or**
- c. incorporated into the definition of a package; or**
- d. removed from the Regulations?**

Please explain your answer, outlining potential impacts on businesses and consumers and any evidence that informed your position.

We think the regulatory position on Linked Travel Arrangements ('LTAs') should be simplified. In a recent survey conducted by the Chartered Trading Standards Institute 18% of respondents wrongly believed they were granted more protections when booking a LTA rather than a package holiday.² Furthermore, over 73% of respondents found it difficult to understand the difference between the definition of a package holiday and the definition of a LTA.³

In light of this confusion among consumers we recommend an amendment to the definition of LTAs, which should remain narrow in its scope. There should also be a positive requirement to provide a clear explanation to the consumer, immediately prior to booking the holiday, whether they will be granted full or partial protections, or otherwise be unprotected under the Regulations.

Information Requirements for Linked Travel Arrangements

Question 10: Which information requirements are particularly important? Please explain why you think this.

The information requirements which we believe to be particularly important under the Schedules of the Regulations are those in relation to:

- Who is responsible for the conformity of the contract;
- When they become responsible for the performance of the contract;
- The available rights and protections, and
- How to enforce them in circumstances where there has been non-compliance with the package contract or when the travel organiser becomes insolvent.

We believe the requirements set out above are important in ensuring clarity and security to the consumers as to when they will be protected under the Regulations. We believe it is crucial to

² 'Wish you were clear! Giving clearer information and greater protection to consumers when they book holidays'[ctsi-wish-you-were-clear-policy-paper.pdf \(tradingstandards.uk\)](https://www.tradingstandards.uk/wish-you-were-clear-policy-paper.pdf), page 5

³ 'Wish you were clear! Giving clearer information and greater protection to consumers when they book holidays'[ctsi-wish-you-were-clear-policy-paper.pdf \(tradingstandards.uk\)](https://www.tradingstandards.uk/wish-you-were-clear-policy-paper.pdf), page 5

make it clear to consumers that when purchasing a LTA they will not have rights against the organiser and will instead need to enforce their rights against the LTA provider.

We also believe the requirements should be supplemented to require confirmation of the name of the insurer of the LTA provider and the level of insurance cover (for each consumer's claim not collectively/aggregated).

Question 12: What would be the impact on businesses and consumers of simplifying the information provision requirements for linked travel arrangements?

We are of the view that simplifying the information provision requirements for LTAs would further improve transparency for the consumer as to what, when, and how they will be protected by the Regulations. The Chartered Trading Standards Institute's survey, which showed there is significant confusion regarding LTAs, suggests that the simplification of the law will better protect consumers from being misled or suffering financial loss.⁴ Interestingly the Chartered Trading Standards Institute also notes that travel organisers, themselves, are often unclear as to whether they have created a LTA.⁵

It, therefore, would benefit both businesses and consumers to simplify the information to be provided to ensure greater clarity as to when a LTA has been created and ultimately whether the protections under the Regulations apply. We are of the opinion that the terms and conditions provided to consumers should be shortened and simplified and the consumer should be clearly informed of the rights and protections associated with booking a package holiday compared to a LTA, how those rights can be enforced and importantly who those rights can be enforced against to provide further clarity and certainty to the consumer.

However, as above, in one simple way the information provision should be supplemented, to provide clarity to the consumer about the LTA providers insurance.

How other tourist services form part of the rules

Question 16: Does the inclusion of 'other tourist services' in the Regulations serve an important purpose?

Consumers frequently place their full trust and reliance in holiday organisers to carefully select appropriate providers of 'other tourist services'. This selection by reputable holiday organisers includes undertaking risk assessment, checking insurance coverage and evaluating feedback from their other consumers. These are steps that are difficult, impractical or may even be impossible for the consumer to take themselves in advance of making a booking.

The inclusion of 'other tourist services' in the Regulations serves an important purpose in ensuring the consumer has the same protections when using these other services, which can pose a similar level of harm, as other parts of their package holiday. Often these 'other tourist services' are less thoroughly inspected and have uncertain insurance cover. Therefore, it is important these services remain in the Regulations to ensure the consumer benefits from the protections granted under the Regulations, especially in circumstances where it may be difficult to claim compensation from third parties giving the consumer the option to seek redress against the tour organiser.

⁴ 'Wish you were clear! Giving clearer information and greater protection to consumers when they book holidays'[ctsi-wish-you-were-clear-policy-paper.pdf \(tradingstandards.uk\)](#), page 5

⁵ 'Wish you were clear! Giving clearer information and greater protection to consumers when they book holidays'[ctsi-wish-you-were-clear-policy-paper.pdf \(tradingstandards.uk\)](#), page 5

We are, therefore, of the view, that 'other tourist services' should remain within the definition of package holidays.

Question 17: Is there sufficient clarity about when an 'other tourist service' will form part of a package?

Question 18: Should the 'significant proportion' criterion be removed from the definition of other tourist services?

Question 19: Is it clear what forms an 'essential feature' of the package, so consumers and businesses understand when a package has been created?

Yes, the 'significant proportion' criterion should be removed as it is ambiguous, likely to result in legal disputes as to its meaning and is unfair to consumers. However, the proposed alternative of 'essential feature' has the same problems. If a tourist service is sufficiently significant to feature as any part of the holiday organisers description of the holiday then the consumer ought to be afforded protections and right of redress against the organiser under the Regulations. A couple of examples of tourist services that might be included within the price of a holiday package, and where the consumer would rely on and hence rightly expect the organiser to be liable in the event of a breach causing serious injury, would include:-

- a. guided excursions (e.g. scuba diving, ski-doo or quad bike trips);
- b. use of water-sports equipment (e.g. kayak, paddle-board etc) from a beach-club or use of a spa (which unknown to the consumer are operated by separate companies to the hotel where they are staying).

It should not be forgotten that the consumer is contracting with the organiser, may not have been told of the identity of the provider of the other service, let alone know whether they are both reputable and adequately insured.

To which travellers should package travel rules apply

Question 20: Do you think the definition of traveller should be changed? If so, how and what impact would this have?

No, but if there are to be amendments, we would recommend that the term should further be clarified in order to improve consumer understanding as to when the Regulations apply.

Question 21: What do you think would be the impact of removing all business travellers from the definition of traveller?

We strongly oppose the proposal to remove business travellers from the definition of traveller under the Regulations. It is our view that consumers travelling for business should continue to benefit from the protections granted under the Regulations in the same way as consumers travelling for leisure. We do not understand the rationale behind the proposal given the potential for scenarios where a business traveller could be seriously injured but is unable to claim under their workplace insurance or pursue their employer for damages. To otherwise exclude business travellers could potentially leave them with no alternative means of redress. Many people travel for mixed reasons (both leisure/familial and work) and hence any distinction of this type is inherently uncertain and likely to result in regular costly disputes.

Further technical changes – Territorial restrictions on insurance cover

Question 30: What are your views on relaxing territorial restrictions on insurance cover for insolvency protection providers to allow supply by those regulated outside the UK?

Compulsory insurance ought to be required by the Regulations for all package tour organisers.

To allow insurers from other jurisdictions to provide the cover would add complexity which could cause issues for a seriously injured consumer who then brings a claim. Unless the insurer falls within the Financial Services Compensation Scheme then the court is unlikely to be satisfied as to the continuity of payment, and hence would be unable to make a periodical payments order. This limitation would lead to some seriously injured people with uncertain life expectancy being under compensated. In addition it is likely to place a cost burden on the State to fund their care when any lump sum compensation runs out.

Further technical changes – Making it easier for the Government to update the information requirements

Question 32: Are there any parts of the information requirements where you think flexibility is particularly needed to ensure the requirements stay up to date?

In addition to our responses to questions 10 and 12 above we would also recommend the introduction of an independent regulatory body to ensure travel organisers comply with their obligations set out under the Regulations and impose sanctions in cases of non-compliance or where clear and accurate information is not provided to the consumer.