

WHAT IS A PACKAGE?

A guidance note for travel
organisers

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Summary

1. This note provides guidance to the travel industry in assessing whether part or all of their business constitutes a “package” for the purposes of the Package Travel, Package Holidays and Package Tours Regulations 1992 (“**PTRs**”) and the Civil Aviation (Air Travel Organisers’ Licensing) Regulations 1995 (“**ATOL Regulations**”). It replaces earlier guidance provided by this Department relating to the definition of a package (guidance on other aspects of the PTRs remains available on the BERR website [here](#)) and represents our view of the law in the light of recent court decisions.
2. This guidance is relevant to all businesses selling travel arrangements, including those selling to business customers¹.
3. Consumers can find a range of advice by clicking on the following website links, including what to look out for when booking a holiday and how to ensure they are protected if something goes wrong.

[Civil Aviation Authority](#)

[Consumer Direct](#)

[Trading Standards Institute](#)

[Department for Business, Enterprise and Regulatory reform](#)

Definition of a Package

4. The legal definition of a “package” is set out in the PTRs and repeated in Box 1 below. It is also the definition used in the ATOL Regulations, which form a protection scheme for flights and air holidays, managed by the Civil Aviation Authority (CAA).

¹ References to “customers” includes business customers. References to “holidays” may not always be relevant to business customers, and such references should be read as if to “business travel arrangements”.

Box 1

Regulation 2(1)

“package” means the pre-arranged combination of at least two of the following components when sold or offered for sale at an inclusive price and when the service covers a period of more than twenty-four hours or includes overnight accommodation:

- a) transport;
- b) accommodation;
- c) other tourist services not ancillary to transport or accommodation and accounting for a significant proportion of the package, and:
 - i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package;
 - ii) the fact that the combination is arranged at the request of the consumer and in accordance with his specific instructions whether modified or not shall not of itself cause it to be treated as other than pre-arranged.

5. The Court of Appeal, in a case called The Association of British Travel Agents Ltd v Civil Aviation Authority², has recently considered this definition. Links to the Court of Appeal Judgment (‘the Judgment’) are provided at the end of this note. The Court of Appeal decision supersedes the High Court Judgment given by Mr Justice Goldring in the same case. The Judgment identified that the essential question in determining whether a package has been created is whether, on a case-by-case basis, the travel services are sold or offered for sale as components of a pre-arranged combination or whether they are sold or offered for sale as separate travel services.

Why is it important to determine whether travel services are being sold as a package?

6. Sellers of travel services sold or offered for sale as a package must comply with the PTRs and, if the package includes a flight, the ATOL Regulations. Note that the word “transport” in the PTRs, applies to all forms of transport, not just flights. It is therefore important that travel firms consider whether the services offered are packages or not, both from the point of view of understanding their obligations and ensuring that the customer knows what they are buying. Click [here](#) if you would like to view the PTRs.

² [2006] EWCA Civ 1356

Box 2

Use of the word “package”

The travel industry uses a number of terms to describe travel services. The terms “package” “DIY package” “dynamic package” and “tailor made holiday” can be confusing, as the meaning of each one seems to depend on the operator/agent using it. Often the word package is used even though the terms and conditions suggest that the services are not intended to be sold as a package. Equally, services may be sold as “flight+hotel” with the suggestion that they are not a package, whereas in fact they may fall within the legal definition of a package. For the purposes of this note, any reference to a “package” (unless otherwise expressly stated) means the legal definition of package as set out in the PTRs and the ATOL Regulations.

How to determine whether you are selling a package

7. The first step is to consider whether you are advertising or selling at least two of the services set out in Package Travel Regulation 2(1) (see Box 1 above) and whether these cover a period of more than 24 hours or include overnight accommodation. If this is not the case, then the services do not meet the criteria in the PTR and are not a package.

8. If the services meet these criteria then the next step is to consider whether they are sold or offered for sale as components of a pre-arranged³ combination. This is the key step in working out whether a package is being sold or not and paragraphs 9 to 19 below cover the points to consider in working this out.

9. The definition of a package in Box 1 above refers to components being sold at an inclusive price. Paragraphs 24 and 26 of the Judgment make clear that if the components are sold or offered for sale as a pre-arranged combination the price will be an inclusive one, and the combination of services will fall within the legal definition of a “package” and must comply with the PTR (and if an air package, the ATOL Regulations).

Examples of Packages

10. Whether services are sold or offered for sale as components of a pre-arranged combination can only be determined on the facts of each individual case. Some cases will be straightforward. The Judgment in ABTA v CAA sets out two examples where there is unlikely to be difficulty in concluding that a package has been sold. In the first example the components are sold at a price different from the sum of the individual parts. In this case, there is little difficulty in concluding that the services are sold as a package. The relevant part of the Judgment is set out in Box 3.

³ For definition of pre-arranged see paragraph 20.

Box 3

Paragraph 25

“In many cases – indeed, I suspect, in the majority of cases – the price of the combination will not be the aggregate of the prices for which the components within the combination would have been sold or offered for sale if each component had been sold or offered for sale as a separate service outside the combination. That may be because some of the components (for example, the services of the organiser’s local representative) would not be available as a separate service outside the combination. Or it may be because some of the components can be provided more cheaply if provided in conjunction with other components – the hotel may provide a courtesy airport transfer service. Or it may be that, in order to sell the package, the organiser will price attractively: the organiser will offer the package of services at a price which is below the aggregate of the prices which would be charged if the components had been sold separately. In those cases there is unlikely to be difficulty in reaching the conclusion, on the facts, that the components (including flight accommodation) are being sold as a pre-arranged combination and at an inclusive price. The same could be said of cases – which, I suspect, are likely to be rare indeed – in which the price of the combination exceeds the aggregate prices for which the components would have been sold or offered for sale separately.”

11. The Judgment also identified another example where there is little doubt that a package has been sold. This is where the consumer has not been informed of the prices of the individual travel services. The relevant paragraph is set out in Box 4.

Box 4

Paragraph 27

“Suppose a customer, in London, who wishes to spend the week at a named hotel in, say, Rome. He asks his travel agent what the trip will cost him. The agent finds that the cost of the return flight will be £X, the cost of accommodation will be £Y and the cost of the airport transfers will be £Z. Without disclosing the individual cost of each service, the agent offers the customer flights, accommodation and transfers at a price of £(X+Y+Z). The customer accepts without further inquiry. In that case there would be little doubt – as it seems to me – that the services were sold as a pre-arranged combination and at an inclusive price. “

Example of sale of separate travel services

12. The Judgment also provides an example of where two or more services are sold separately, rather than as a package. See Box 5 below.

Box 5

Paragraphs 28 and 29

“Now suppose that the agent has told the customer that the cost of flights will be £X, the cost of accommodation will be £Y and the cost of transfers will be £Z; and has explained to the customer that he can purchase any one or more of those services, as he chooses, without any need to purchase the others. He has explained, in effect, that the customer can choose to purchase the other services elsewhere; or to make other arrangements. In that case – as it seems to me - there would be little doubt that the services are not offered for sale as a pre-arranged combination and at an inclusive price. “

“What, then, if the customer chooses, and contracts for, one of those services. It is plain that that service would not be sold as a pre-arranged combination: it is not sold in combination with any other service. And it is plain that that position would not alter, if having paid for one of these services, the customer subsequently decides to take, and contracts for, another of the services. Nor would the position alter if, after paying for the second service, the customer later decides to take, and contracts for, the third service. And it would make no difference if, having entered into three separate contracts and received three separate invoices, the customer were to pay the three invoices with a single cheque. The position would be the same. There would have been no sale of a pre-arranged combination of components at a single inclusive price. Rather, there would have been three separate sales of independent services, the aggregate of the prices payable for the three separate services being satisfied by a single payment.”

13. The two paragraphs in Box 5 suggest that the agent has offered separate travel services at specific prices, and has made clear that the customer can buy any one or more without any need to buy the others; he has not offered a ‘package’.

14. The sale of an individual travel service, following an offer as described in Box 5, is exactly that. It is not sold in combination with any other service. A similar analysis applies to the subsequent sale of a second travel service, and to a third service, if the customer later decides to buy them. Each sale is of an individual travel service, and so does not fall within the definition of a package (see Box 1 above).

15. Since the three sales are not a pre-arranged combination, the settling of the three separate invoices by a single payment does not create an ‘inclusive price’, and so does not bring the whole series of transactions within the definition of a package (see paragraph 18 composite billing).

16. The Judgment has thus far identified cases where it is clear a package has been sold or offered for sale, ie where the price of the services is greater or less than the arithmetic total of the individual travel services; and where the services are offered together at a single price. It has also identified how the sale of more than one travel service sequentially, for a single payment need not in principle be a package.

17. The Judgment (see paragraph 31) then goes on to say that difficult questions of fact are likely to arise if the customer chooses and contracts for two or more of the services on the same occasion. To determine whether these services were offered and sold either in combination or as separate sales of travel services, involves considering the evidential pointers in the transaction(s).

Evidential Pointers

18. The Judgment provides a number of evidential pointers that should be considered to help determine the facts of specific cases. Where there is dispute over the true nature of a sale the Court is likely to consider the evidential pointers to determine whether the sale was a package or whether the services were sold separately. The pointers are set out below (the paragraph numbers alongside the pointers refer to the paragraphs in the Judgment).

- **Advertising, brochures and commitments in relation to hotel beds or airline seats** (paragraph 56) - are all useful indicators that services are being offered as packages, but the presence or absence of one or other of the indicators will not necessarily be determinative of whether services are offered separately or in combination.
- **Describing the services as a package or dynamic package** (paragraph 47) – – the Court of Appeal agreed that if an agent offers dynamic packages, that include flights, an ATOL will be required.⁴
- **Request to buy a holiday** (paragraph 49) – if the customer approaches an agent to “buy a holiday” it is likely that what will be sold or offered for sale will be a package.
- **Request to buy a flight and accommodation and/or other services** (paragraph 49) – it will not necessarily follow that travel services will be sold or offered for sale as a package, but it is likely that they will be.
- **Non-availability of travel services as a separate service outside the combination** (paragraph 25) - for example if the services of a local representative would not be available as a separate service outside a combination but would be available within a combination, there is unlikely to be any difficulty in concluding there is a package.

⁴ ABTA v CAA concerned guidance issued by the CAA to help travel organisers and travel agents decide what part of their business need ATOL protection.

- **Payment and Composite billing** (paragraphs 29 and 30) – composite billing might be evidence (in a particular case) that the services had been sold as a package, but the sale of a pre-arranged combination cannot be altered by invoicing the components separately.⁵ So, the substance of the arrangements ie whether they are a package or not, will not be affected by composite or separate billing or by whether the customer settles the bill or bills by a single payment or multiple payments. The key point is whether the components are sold in combination or separately.

19. **Customer perception** - in addition the Judgment draws out that whether the customer thinks he is buying two or more separate services rather than a combination of services (or vice versa) may be a powerful indicator as to the nature of the transaction. How you handle the other evidential pointers above is likely to have a strong effect on the customer's perception of what they are buying.

What does “pre-arranged” mean?

20. A previous European Court case⁶ confirmed that the term “**pre-arranged**” does not only apply to components put together in advance, eg in a brochure, but also combinations put together based on the customer's requirements. So pre-arranged covers cases where the components have been put together well in advance of contact with the individual customer, and also those where they are not put together until right up to the moment when the parties reach agreement and conclude a contract.

Internet Sales

21. The examples set out in the Court of Appeal Judgment are based on a conversation with a travel agent and do not refer specifically to internet sales. When making an internet booking, the customer is unable to explain whether it is his intention to purchase a package and cannot seek clarification if the site is unclear. It is therefore important that the website provides clear information, prior to a decision to make a booking, about what is being offered for sale. The same principles apply to internet sales as those expressed in the Judgment for verbal transactions and businesses will need to consider whether they are offering services in combination, or whether the services are being sold or offered for sale separately. Clear and unambiguous statements will be important if the customer is to know what he is purchasing.

22. The examples in Boxes 3 and 4 set out scenarios in which a package is created. Box 3 deals with pricing, and concludes that if the components are offered and sold at a price different from the sum of the individual parts there is little difficulty in concluding that the services are sold as a package. This is equally true for internet sales.

⁵ Article 2(1)(c)(i) of the PTR states “the submission of separate accounts for different components shall not cause the arrangements to be other than a package”;

⁶ Club-Tour, Viagens e Turismo SA v Alberto Carlos Lobo Goncalves Garrido (Case C-400/00) [2002] ECR I-4051

23. Box 5 includes an example of a sale which is not a package. This is based on the consumer being fully informed of the price of the individual elements and the option to purchase any one or more with no obligation to purchase the others. This example is based on a conversation with an agent, and a website would need to provide exactly the same type of information prior to the consumer making decisions to purchase each travel service. In this example the customer contracts for each item, before moving on to purchase the next.

24. The Judgment also states that it may be difficult to determine whether a package is being sold. In these cases, to help decide the basis of the sale, a number of evidential pointers were identified (see paragraph 18 above). The existence of one or more pointers could imply that a package has been sold and it should be noted that the Judgment stated that the customer's perception may be a powerful evidential pointer to the true nature of the transaction. This will apply equally to internet transactions.

25. Some websites use a shopping basket to place items in prior to purchase. The same rules apply to web sales as to over the counter sales: if the customer chooses and contracts for two or more of the services on the same occasion it could well be a package. Other evidential pointers set out in paragraph 18 will also be relevant as to whether the sale is a package.

26. There may be occasions when there are conflicting indicators; the way in which the products were offered for sale indicated the sale of separate travel services, but the way in which the sale was completed indicated the sale of a package (or vice versa). In these cases it will be necessary to consider the evidential pointers set out above at paragraphs 18 and 19.

Other Issues to Consider

Impact of the Unfair Commercial Practices Directive (UCPD)

27. The UCPD introduces a general prohibition on unfair commercial practices (mainly marketing and selling). Unlike the PTRs it relates only to business to consumer transactions⁷. The Directive prohibits 31 types of unfair commercial practices outright, including certain high-pressure or persistent selling methods. It also has rules prohibiting misleading and aggressive practices, and introduces a catch-all "duty" not to use unfair commercial practices.

28. The Directive prohibits both misleading actions and misleading omissions. Misleading actions might occur when a practice misleads through false or deceptive information, and this would be likely to (or does) cause the average consumer to make choices about products he might not otherwise have taken. Matters in relation to which a commercial practice can be a misleading action include: the main characteristics of the product (including services); the extent of the trader's commitments; the motives for the commercial practice and the nature of the sales process; and the consumer's rights. Misleading omissions occur when traders fail to give consumers material information they need to make an informed

⁷ The Government has consulted several times on how the Directive should be implemented in the UK. The Consumer Protection from Unfair Trading Regulations implementing the Directive are planned to come into force in April 2008.

choice in relation to a product and this would be likely to (or does) cause the average consumer to make choices about products he might not otherwise have taken. Misleading omissions can occur through omitting information, hiding it or making it unclear, unintelligible or ambiguous or by giving it too late.

29. The prohibition on misleading omissions is new. It will require traders for the first time to consider not only whether any information they have given is misleading (either through what is said or through what has been left out) but also whether any information they have left out ought to be given irrespective of whether anything they have said is misleading. Where a commercial communication constitutes an 'invitation to purchase'⁸ certain information is always regarded as material, if not already apparent from the context. These include: the main characteristics of the product, to an extent appropriate to the medium and the product; and the geographical address and the identity of the trader, such as his trading name and, where applicable, the geographical address and the identity of the trader on whose behalf he is acting. This is in addition to any other information which might be material under the wider prohibition on misleading omissions.

31. UCPD will apply to the whole travel industry, not only to those selling packages. Practices that are likely to mislead (through actions or omissions) the average consumer into thinking he is buying a protected holiday, when they are not, are likely to be unfair. This is because the average consumer may be likely to make different decisions had he known his prepayments were not protected.

32. The Office of Fair Trading (OFT) are producing joint OFT/BERR guidance on the Regulations implementing the UCPD. This is expected to be published in early 2008.

Requirements of the E-commerce Directive

33. If you advertise or sell travel arrangements online you will also need to consider the Electronic Commerce (EC Directive) Regulations 2002. Under the above Regulations, you are required to provide the following information on your website:

- your name;
- your address;
- your contact details, including an email address;
- where you are registered in a trade or similar register available to the public, details of the register in which you are entered and your registration number, or equivalent means of identification in that register;
- where the provision of the service is subject to an authorisation scheme, the particulars of the relevant supervisory authority;

⁸ An 'invitation to purchase' is defined as a commercial communication which indicates characteristics of the product and the price in a way appropriate to the means of the commercial communication used and thereby enables the consumer to make a purchase. A page or pages on a web site where consumers can place an order would normally be an invitation to purchase where the product's price and characteristics are given.

- where you undertake an activity that is subject to VAT, the identification number referred to in Article 22(1) of the sixth VAT Directive 77/388/EEC, as last amended by Directive 1999/85/EC.

34. For more detailed guidance please refer to the BERR website [here](#).

The Unfair Terms in Consumer Contracts Regulations 1999 (UTCCRs)

35. These Regulations place an obligation on traders to ensure that their terms and conditions are not unfair. Terms can be unfair in various ways, including if they have the effect of binding a consumer to terms that they have had no real opportunity to read and understand before the conclusion of the contract. Traders will therefore need to ensure that their terms and conditions comply with the UTCCRs and that consumers have an opportunity to read and understand the terms before they commit to making a purchase. More guidance about the UTCCRs is available on the OFT's website at www.oft.gov.uk

Need further information?

36. This document provides guidance on the current legal framework and aims to help industry determine whether specific sales constitute a package. The basis of whether a package has been sold will depend on the facts of each particular case and ultimately, if there is a dispute as to the true nature of the sale, it is for the Court to decide. You should also be aware that bonding schemes run by approved bodies and the ATOL Regulations may impose requirements that are not covered in this document. If you remain unsure after reading this you can obtain further information from the contacts listed below.

37. If you would like to see a copy of the Court of Appeal Judgment on this issue please click [here](#). **You may also wish to seek independent legal advice.**

38. Current ATOL holders can discuss their particular arrangements with their normal contact at the CAA. Firms considering whether they need to hold an ATOL should contact Industry Affairs on 020 7453 6700 or newapplicants@cpq.org.uk.

BERR
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