



COLLINGBOURNE
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A GUIDE TO HOLIDAY CLAIMS

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THE AIM OF THIS BOOKLET IS TO PROVIDE SOME ASSISTANCE IN THE FIELD OF HOLIDAY CLAIMS.

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INTRODUCTION

IF UNFORTUNATELY YOU HAVE SUFFERED AN INJURY OR ILLNESS WHILST ON HOLIDAY, BE IT PACKAGE OR NOT, IT IS IMPERATIVE TO SEEK LEGAL ADVICE AS SOON AS POSSIBLE.

CLAIMS ARISING FROM ACCIDENTS ABROAD DIFFER FROM THOSE ARISING FROM ACCIDENTS IN THE UK. DEPENDING ON THE CIRCUMSTANCES, UK LAW MAY NOT BE APPLICABLE AND SO, FOR EXAMPLE, THE TIME FRAME GRANTED TO YOU TO CLAIM MAY BE DRASTICALLY SHORTENED. CLAIMS RELATED TO INJURIES OR ILLNESSES SUSTAINED ABROAD CAN BE DIFFICULT TO PROCESS AND NAVIGATE WITHOUT AN EXPERIENCED SOLICITOR AT YOUR SIDE. IT IS MOST IMPORTANT THAT NOT ONLY DO YOU UNDERSTAND THE PROCESS THAT IS ADOPTED IN YOUR CASE BUT, ALSO THE POTENTIAL OUTCOMES.

OUR TEAM OF EXPERTS ARE ON HAND TO PROVIDE INITIAL ADVICE AS TO WHETHER OR NOT YOU HAVE A VALID CLAIM FOR COMPENSATION AND TO TALK YOU THROUGH THE PROCESS OF PURSUING A HOLIDAY CLAIM.

CLAIMING FOR AN ACCIDENT ABROAD

IF SOMETHING WENT WRONG WITH YOUR HOLIDAY, YOU MAY BE ENTITLED TO COMPENSATION FROM THE COMPANY YOU BOOKED WITH. BEFORE YOU BOOK AND ENJOY YOUR HOLIDAY, IT IS WORTH MAKING YOURSELF FAMILIAR WITH YOUR LEGAL RIGHTS.

The law concerning compensation claims varies from country to country. The law in foreign countries can be complicated. It is therefore imperative that you seek advice from specialist solicitors who understands the law and issues, and are able to achieve the outcome you deserve.

Your entitlements very much depend on whether you have purchased a package holiday or not. Whilst cheap online deals, which allow you the freedom to build your own holiday, are tempting, purchasing a non-package holiday often rids a significant portion of the protection you are entitled to when purchasing a package holiday.

A claim may be the result of an accident causing physical injury or an illness. If you were working at the time of the accident, you may be entitled to claim for compensation. This claim can be progressed by a solicitor based in the United Kingdom, that is so long as you were employed by a company based in the UK at the time of the accident, or, if the employer has a registered office or place of business in the UK. This claim would be dealt with slightly differently and so you should request advice from an Employers' Liability Solicitor.

EXAMPLES OF ACCIDENTS ABROAD

Many relate the term 'accident abroad' to a slip or trip. However, there are numerous examples of how an accident or illness abroad may arise such as:-

- A road traffic collision involving a car, scooter or motorbike where you were the passenger, driver or, pedestrian;
- Food poisoning;
- E.coli;
- Salmonella;
- Legionnaires' disease;
- Shigella;
- A trip or fall as the result of slippery or uneven surfaces;
- An injury sustained whilst enjoying an excursion;
- An injury or illness sustained whilst on a cruise or other form of boat;
- An injury or illness sustained whilst travelling by air.

WHEN SHOULD I MAKE A CLAIM?

Rules surrounding limitation depends on the country and legal system through which the claim is being pursued. Limitation differs from country to country. Pursuing a claim associated with an injury abroad is complex and so it is imperative that you seek advice from a specialist solicitor. For the purpose of this guide, the scenario of a claim being pursued in the UK has been adopted.

The Limitation Act 1980 states that a person must make a claim within three years from the date of knowledge. Ordinarily, this means if the incident took place on the 01st June 2016, you shall have until the 01st June 2019 to either settle the claim or, issue proceedings. Should you fail to comply with this time frame, your claim shall be statute barred and you shall not be entitled to pursue the claim.

However, Limitation can be confusing as the date of knowledge is sometimes acquired at a later point in time. Sometimes, persons who have been harmed are not aware of their loss until much later. In such cases, the time for calculating the three years runs from the date they acquired the knowledge.

If the victim is a minor, and therefore under the age of 18, the three year limitation period runs from the child's 18th birthday.

Limitation is further complicated where a person lacks capacity. A person may lack capacity as the result of mental illness or brain damage. In such a scenario, limitation starts from the date that person acquires capacity. Should a person acquire capacity for a short period of time and then lose capacity again, the three year limitation period would start at the point they recovered capacity. In such an event, limitation would continue to run even when a person loses capacity again. Grave mistakes can be made by not taking this into account.

There are occasions where a victim does not acquire capacity. In such a case, there is effectively no limitation as limitation can never start to run.

If there is a death as a result of the injury suffered, the three year limitation period runs from the date of death. A family member most often known as an Administratrix or Administrator is entitled to pursue the claim on the part of the deceased.

In most cases, the Limitation Act provides certainty as to when a person should seek to claim for compensation without being time barred (in other words, prevented from pursuing the claim). However, there is provision for the Court to allow claims to be made out of time. This is rare and thus, it is important to be aware of time limits when making a claim.

Claims involving an injury or illness sustained whilst on board a vessel or by air have a limitation period of two years.

WHO YOU SHOULD CLAIM AGAINST

Your legal rights and the identity of the Defendant depends on whether you purchased a package holiday or not. When you purchase a package holiday, you shall be able to pursue a claim in the UK however, when the holiday is not package, this option is extremely less likely to be available.

A PACKAGE HOLIDAY

If you book a package holiday, the tour operator is legally obligated to ensure that services and elements of your holiday are provided to a reasonable standard. In English law, this is enshrined under the Package Travel Regulations 1992 ("the Regulations"). Services and elements may include: flights; accommodation; travel; activities etc. Accordingly, should you suffer an injury abroad, and should you suspect that injury is the result of any services or facilities provided within the package, we may be able to pursue a claim against the UK based tour operator.

IF YOU DO NOT PURCHASE A PACKAGE HOLIDAY

If you book a holiday which is not a package, which is particularly easy and tempting to do given the cheaper online deals that are easily accessible, the contract most likely states that holiday elements, such as flight, accommodation or activities, are provided by the transport or accommodation provider direct. Therefore, the company you have booked through, most likely online, shall not be liable should you sustain an injury or illness during your holiday. Rather, the UK based company shall refer you to the accommodation or transport supplier.

In this event, you shall be obligated to bring an overseas claim which is far more complex. The costs associated with the claim can be more than the compensation you seek to recover.

WHAT YOUR SOLICITOR SHALL DO ONCE YOU HAVE INSTRUCTED THEM

Your solicitor shall attend upon you in order to discuss what has happened, determine whether a claim can be pursued and provide you with initial advice and guidance. Hospital and home visits are available when required.

During the course of the initial meeting, your Solicitor shall discuss with you the concerns that you have, the circumstances of the claim, the service provided to you and, any losses you have suffered as a result. Your solicitor will have considerable experience in cases in this nature and in all likelihood would have also dealt with a similar case in the past.

Subject to the solicitor being satisfied that there is potential in your claim, issues of funding will be discussed with you. Those issues are set out in the following subparagraphs.

Once funding matters have been discussed, the procedure your Solicitor follows depends on the identity of the Defendant and thus whether your claim can be bought in the UK or, in a foreign country. However, for the purpose of this Guide, we shall adopt the event of the claim being bought in the UK.

Your Solicitor shall send the allegations of negligence to the Defendant under what is called a Letter of Claim. This is a detailed letter that sets out the history of the matter, the reasons why the Defendant is at fault and, the remedy you seek. Your solicitor shall put the Defendant on notice that, should liability be denied, the Defendant shall disclose liability documents which may include: risk assessments; accident reports; photographs etc.

Once the Letter of Claim has been sent to the Defendant, they have 14 days to acknowledge receipt of the letter. Thereafter the Defendant, their insurance company or, a Solicitor acting on their behalf, shall be obligated to investigate the claim and respond, confirming their position on liability within three months.

Any letter of response must set out which parts of the claim are admitted, which parts are denied and, if parts are denied, provide any documentation in support of their denial.

This is referred to as the protocol period and is set out in the guidelines issued by the Court named the Civil Procedure Rules, moreover the Pre-Action Protocol for Personal Injury Claims.

Any party that fails to adhere to the Protocol can incur serious cost consequences which can be substantial. Your solicitor will be able to advise you as to whether or not it will be appropriate to disclose, at an early stage in proceedings, the medical report that you have obtained. Sometimes, the medical report is not disclosed until later on in the case but again this is something that will be discussed with you.

It is important to note that in certain circumstances the report can ordered to be disclosed on the basis that any Expert advising in the case has an overriding duty to the Court withstanding the person that pays their fee.

There are certain caveats that apply to this and again your Solicitor will discuss with you the principles and legal privilege.

WHAT THE CLAIM CONSISTS OF

A claim for an injury or illness sustained abroad seeks to put you in the position you would have been had the injury or illness not occurred. Of course, we are not able to turn back the clock and change what has happened. Rather, sometimes, the only appropriate redress is financial.

There are two types of damages in a personal injury claim. The first is general damages. This represents the injury or illness you have suffered along with the associated pain and suffering. The second is special damages which reflects the out of pocket expenses you have incurred.

Damages can often be set into four headings, although not each heading may be applicable to your claim:-

- **General damages** in respect of the injury or illness you have suffered;
- **Out-of-pocket expenses** reflecting any reasonable expenses you incurred;
- **Loss of enjoyment** which is compensation for the disappointment and distress caused by the injury or illness;
- **Loss of value** to compensate the difference between the value of the holiday you paid for and the holiday you experienced.

Arguing the case in a detailed and coherent format may achieve an earlier settlement, and is likely to recover a better settlement for you.

WHAT YOU ARE ENTITLED TO IF YOU HAVE PURCHASED A PACKAGE HOLIDAY

You of course have the right to expect the holiday that you booked and paid for. Your legal rights and the mechanisms and procedures of enforcing your rights, depends on whether you purchased a package holiday or not.

When you purchase a package holiday, you shall be able to pursue a claim in the UK however, when the holiday is not package, this opportunity is less likely to be available.

If you book a package holiday, the tour operator is legally obligated to ensure that services and elements of your holiday are provided to a reasonable standard. In English law, this is enshrined under the Package Travel Regulations 1992 ("the Regulations"). Services and elements may include: flights; accommodation; travel; activities etc. Accordingly, should you suffer an injury or illness abroad, and you suspect same is the result of any services or facilities provided within the package, we may be able to pursue a claim against the UK based tour operator.

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WHAT IS A PACKAGE HOLIDAY?

What amounts to a package holiday in lay terms differs to the definition of a package holiday legally. Therefore, to be clear, you have purchased a package holiday if:-

- The holiday comprises of at least one overnight stay
- The holiday consists of at least two of the following elements (purchased at the same time):-
 - Flight
 - Accommodation
 - Other tourist services that form a significant proportion of the package
- The holiday is sold at an inclusive price.

ADDITIONAL TIPS ASSOCIATED WITH WHAT YOU ARE ENTITLED TO WHEN YOU PURCHASE A PACKAGE HOLIDAY:

YOU SHOULD GET WHAT YOU PAID FOR

Regulation 4 confirms that travel organisers cannot provide customers with misleading information. Effectively, the holiday must be as described.

Accordingly, it is prudent to consider carefully how the package holiday is described, be it in the brochure or on the website. If the holiday then does not match the description, you may have a claim for compensation. The claim would be pursued against the tour operator.

HOLIDAY BROCHURES MUST BE 'LEGIBLE, COMPREHENSIBLE AND ACCURATE' REGARDING THE PRICE AND THE INFORMATION PROVIDED.

Brochures must be 'legible, comprehensible and accurate' in relation to the price and, the information provide.

Strict rules located under Regulation 5 are in place governing what must be provided in the brochure. Such rules apply to both tour operators and travel agents. Breach of Regulation is a criminal offence.

The Regulations state the following elements must be outlined within the brochure and so a prudent buyer would check to ensure the following have been discussed:-

- The itinerary
- The meals included in the package

- Confirmation of whether a minimum number of persons are required for the package to be effective and, if so, the date by which the customer must be informed in the event of cancellation
- Details of the destination, characteristics and types of transport used
- The type of accommodation along with its location, degree of comfort and, the accommodation's core features
- Either the sum or the relevant percentage of the price, that is to be paid on account, and all relevant deadlines for payment of the balance
- Where the accommodation is to be provided in a Member State, its approval or tourist classification under the rules of that Member State
- General information about passport and visa requirements which apply to British citizens
- Health regulations associated with the journey and stay
- The arrangements (if any) which apply if consumers are delayed at the outward or return points of departure
- The provisions for security in relation to money paid
- The measures in place in the event of insolvency.

CHANGES BY THE ORGANISER TO A PACKAGE HOLIDAY

Before departing:

Regulations 12 and 13 state that if there are alterations to your package holiday or to departure times or location, the travel organiser must notify the consumer as quickly as possible in order to enable them to take appropriate decisions. Notably, the consumer has the choice to either withdraw from the contract (thus the holiday) without receiving penalty or to accept the alterations. The consumer must thus respond to the notification. Should you wish to withdraw from you contract, you must notify the provider at this point in order to be protected from the Regulations.

Post departure:

Regulation 14 states that where a significant proportion of the services contracted for are either not provided either absolutely or, incompletely, certain obligations fall on the provider.

Firstly, the organiser must seek to arrange suitable alternative arrangements at no extra cost to the customer. Should the services not meet the standard of the services that had been arranged, the organiser is further obligated to compensate you for the difference between the services that were to be supplied and the services that were actually supplied.

If it is not possible for the organiser to make such arrangements or, should you customer choose to reject the alternative suggestions, the organiser shall transport you back to the place of departure or, to another place you have both agreed. Moreover, you may be entitled to compensation.

BUILDING WORKS

Should you believe your holiday has been ruined by building works and you had not been notified by your tour operator, you may be entitled to compensation.

Should the tour operator be a member of Abta, The Travel Association, then the ABTA Code of Conduct (January 2010 edition), they are subjected to further responsibilities associated with building works.

Notably, should the tour operator become aware of building works, which may reasonably be considered to significantly blight the enjoyment of the holiday or any pre-booked arrangements, the operator must notify the customer of the situation as soon as possible.

Accurate details of the building works must be provided to the customer, together with the option of transferring to alternative travel arrangements.

WITHDRAWAL FROM A HOLIDAY CONTRACT

Regulation 13 provides implied terms in the event a customer withdraws from the holiday contract or if the travel operator/travel agent cancels the holiday, so long as the latter is not due to the fault of the customer. A customer's rights associated with these implied terms are as follows:-

1. To be offered a substitute package of equivalent or superior quality;
2. To be offered a package of lower quality and the opportunity to recover from the travel operator, the difference in price.

Or, if options 1 and 2 not available

3. To have the purchase price repaid as soon as possible

Additionally, you may be entitled to compensation if you made purchases directly relevant to the holiday and, as a result of the withdrawal, the purchases are no longer required. Examples may include sun screen, clothing, parking fees, kennel fees etc. Of course, you would need to ensure that you have evidence to show the costs incurred and, that same are not otherwise recoverable.

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