



# **International Personal Injury: Cross-Border Complexity**

Cheryl Palmer-Hughes, Associate Solicitor, Irwin Mitchell LLP  
14 October 2015

# What we'll cover :

---

- Irwin Mitchell's International Personal Injury team
- Package Travel Regulations: a Summary
- Package Travel Regulations: Recent Developments
- A typical case? Client stories
- Conclusions and questions

# 1. International Personal Injury at IM

---

- Teams across Birmingham and London
- Cases include :
  - Aviation
  - Cruise incidents
  - Accidents in hotels
  - Accidents whilst on holiday
  - Accidents at work abroad
  - Medical negligence abroad
  - Cosmetic surgery abroad
  - Road Traffic accidents abroad, including coach crashes, cycling and motorcycling accidents
  - Terrorism claims

# Before we Begin...

---

What can possibly go wrong abroad?!...







## 2. Package Travel Regulations 1992: a Summary

---

### What are they?

- Designed to achieve harmonisation of laws relating to consumer protection within the EU and the single market in the context of package tourism.
- Apply to packages sold or offered for sale in UK.

- 
- See Reg. 2(1) for definition of ‘package’:

*...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...*

- 
- May seem simple but beware of complicating factors:
    - What constitutes ‘pre-arrangement’?
    - What constitutes an inclusive price?
    - What constitutes an offer for sale in the UK? Internet sales?
    - Who is protected by the Regs? Buyer? Employee? Buyer’s guest?
    - What are ‘other tourist services’?
  - Much expert commentary and case law on these points. Apply to facts of each client’s case.

---

## *What are the practical effects of the Regs.?*

- English Courts have jurisdiction.
- Liability judged with reference to local standards (thanks to Jatinder for dealing with this!)
- C entitled to local remedy.

### 3. Package Travel Regulations 1992: Recent Developments

---

- Introduction of the Package Travel Directive:
  - Publication in Autumn 2015
  - 2 year implementation
  - 6 month adaptation
  - In force in Summer 2018?

---

## *Why is the new Directive being introduced?*

- Transformation of the travel market: increase in internet sales....so long teletext?
- Packages now taking different forms- e.g. 'Click through' internet sales.

---

From this...



...to this



---

## What will be introduced?

- Protection for customised packages and ‘click through’ arrangements.
  - New Article 3: services combined by one trader or purchased from individual providers through a single point of sale (e.g. ‘click through’ websites)
- **BUT** will providers escape liability with the ‘24 hour’ rule and requirement for 3 pieces of consumer information to have been passed on?

---

- Changes to liability

- Organisers responsible for overall performance of package (even if fault on the part of sub-contractor).
- Organisers have liability to remedy “lack of conformity” unless impossible or disproportionate.

---

- Practical changes

- Member States shall ensure that the organiser gives “appropriate assistance without undue delay” to a traveller in difficulty (see Article 11(5) )
- Increased insolvency protection?

---

## *What will be the effects of the new Directive?*

- Significant re-definition of ‘package’.
- How will sellers react, particularly internet ‘click through’ retailers?
- How will liability arrangements between sellers and sub-contractors be re-drafted? Can sellers bypass liability for sub-contractors through carefully-worded contracts of sale?

## 4. A Typical Case? PTR Case studies

---

### Case Study One

- Newly-married couple on honeymoon in Maldives in 2011. Killed in quad bike crash. Alleged fault on the part of resort employee.
- Left behind a six-month child.
- IM acted for the Litigation Friend, and secured substantial settlement to provide for the orphan into adulthood.
- Also acted on pro-bono basis for grandparents in relation to their expenses and the UK inquest.

---

## Case study Two

- Group claim involving English schoolchildren injured in coach crash whilst on school trip in France.
- Teachers and ski instructors also injured.
- Trip organised through Tour Operator by school.
- Tour Operator or Coach company responsibility?
- Who is responsible for teachers/ski instructors?
- Interplay with criminal proceedings and other cross border regulations.....

## 4. Conclusions

---

- Often complex scenarios and injuries.
- Added complexity of issues of jurisdiction and applicable law.
- Additional evidence-gathering required. Nature and format of foreign travel? Domicile?
- Additional logistical difficulties. Foreign courts and foreign agents.



Any questions?

---

# Cheryl Palmer-Hughes

Associate Solicitor, Irwin Mitchell LLP

0044 121 214 5223

[cheryl.palmer-hughes@irwinmitchell.com](mailto:cheryl.palmer-hughes@irwinmitchell.com)

@IMTravelLawyer

[www.irwinmitchell.com](http://www.irwinmitchell.com)