

Guidance on the requirements of consumer law applicable to the sale and advertising of flights and holidays

CAP 1014



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Introduction

1. This document is intended as a short, quick reference guide to help businesses including travel agents, tour operators, airlines and price comparison websites comply with the relevant legislation when advertising and selling flights and holidays. It aims to give a straightforward explanation of the main points of the law in this area. It does not replace any laws or regulations and does not constitute legal advice.
2. This is not a comprehensive guide to the requirements of the consumer law applicable to the sale of flights and holidays, and for further information about the legislation and its legal requirements you should refer to the full OFT/CAA Guidance . If you have any specific questions about how the law applies to your business, you should seek independent legal advice.
3. This guidance does not consider the requirements of competition law applicable to businesses engaged in the sale and marketing of holidays and their component parts.

1 REMEMBER:

You must display flight prices clearly and fairly

- 1.1 In order to comply with consumer law when selling flights, you need to make sure that the headline price, which is the first price a customer sees, includes everything they will have to pay. It must include any unavoidable taxes, charges, surcharges and fees, including fees you have added to the fare, and prices must always be displayed inclusive of these charges. This includes per-booking fees. The cost of any genuinely optional service does not need to be included in the headline price, but customers must be able easily to access information on what the costs for these additional services would be.
- 1.2 You must also make available the airlines terms and conditions and make clear any conditions such as limited availability or a short booking period that the customer should know about before deciding to buy.

Does this apply to all places where a price for a flight is advertised?

- 1.3 Yes. This includes where flights are offered in brochures and shop windows as well as on booking websites and price comparison websites, and in any other media such as television or radio adverts.
- 1.4 Prices displayed must be genuinely available and include all compulsory costs.
- 1.5 Where there are optional services available these must be made clear, in a manner appropriate to the medium in which the advert is placed. Certain types of advertising have technical limitations. However, it should be noted that the requirements of the relevant legislation still apply and businesses should take care to ensure their customers are presented with the information required.

What needs to be included in the headline price?

- Unavoidable charges such as Government taxes or airport charges;
- any unavoidable booking, transaction or handling fees;
- any unavoidable card payment charges, for example, a fee for paying by debit card; and
- any other unavoidable charges.

What about optional extras?

- 1.6 Where there are genuinely optional extras which incur an extra charge, such as those for taking checked baggage, priority boarding, or insurance, your customers must be free to select these services if they require them, on an opt-in basis. It must also be clear from the start of the booking process, that is, the first page displayed following a search for flights, what the optional extras are and how much they cost. When selling flights on a website this may be achieved by providing a link to a comprehensive list of the available services, and their prices, for each supplier at the start of the booking process, through, for example a 'one-click' link to a list of the services from the page where a headline price is displayed. It is important that customers can choose the flights and any extras that best suit their needs. They should not be misled or led by default or through inertia into paying for a service they do not require. Businesses must not charge customers payment surcharges that exceed their costs in providing that payment method.

Providing a breakdown of the price

- 1.7 In addition to displaying an inclusive price you must also provide a breakdown of what is included in the price, including the base fare and any taxes, fees and charges that have been added to the fare, including any fees you have added to the fare. Where the flight is sold as an inclusive part of a package holiday there is normally no requirement to provide a breakdown of the price.

2 REMEMBER:

You must be clear about the name of the airline the customer will be flying with

- 2.1 The law requires you to inform customers of the name of the airline they will be flying with as soon as it is known.

How does this work in practice?

- 2.2 This means on booking websites and price comparison websites you must make it clear right from the start of the booking process the name of the airline. Disclosure of the name of the airline should be at the earliest opportunity, and it should not be left to a later stage in the booking process. This is the case whether the customer is buying a flight on its own or as part of a package. When identifying the airline care should be taken not make unauthorised use of airline logos, branding or the airline's intellectual property.

What if I don't know which airline will be operating the flight?

- 2.3 In some circumstances at the time of booking you may be unaware of the airline that will be operating the flight. This may happen where holidays are booked well ahead of the intended period of travel, or where prices are advertised in brochures. In these circumstances you must inform your customer of the name of the airline as soon as it is known.

What if the airline changes?

- 2.4 If the airline operating the flight changes after the booking is made you must ensure you take further steps to inform customers of the name of the replacement airline.
- 2.5 Where the airline operating the flight has changed this may be important information for your customer, as the airline originally operating the flight may have been an important part of their decision making process. If the airline might change, you will need to ensure you provide the customer with this information early in the booking process.

3 REMEMBER:

You must be honest, fair and professional in your dealings with customers and give them the information they need at the time they need it

- 3.1 It is important that customers are treated fairly before, during and after they buy something, and that activities such as advertising or marketing are also undertaken in a fair and non-misleading manner.
- 3.2 This means that you must act in accordance with the standards expected of your profession and must not behave in ways which are harmful or misleading to your customers, or which put customers at an unfair disadvantage, or cause them to take a decision they wouldn't otherwise have taken.

The law sets out a number of requirements in relation to honest, professional and fair behaviour

You must provide customers with clear, accurate information that is easy to understand

- 3.3 This means you must not provide false, misleading or confusing information to customers. Such information can relate to the price, the sales process, your business or the customers' rights (whether pre- or post-contract).
- 3.4 Where you provide information it should be factually correct, provided in a timely manner, easily accessible and easy for your customers to understand.

FOR EXAMPLE:

- prices and information about the holidays, flights and any extras on offer should be clear and truthful, and not mislead customers into buying something they wouldn't have bought otherwise;
- you must not automatically add any optional extras during the booking process, your customers must be free to choose these services on an opt-in basis;

- you must include any unavoidable costs, in the headline price, it's important to note that the CAA and OFT consider that unavoidable costs include those that most customers would need to pay in order to complete the transaction eg payment card surcharges.
- you should not advertise flights or holidays for sale, if you do not have those flights or holidays available. Where only a limited number are available this should be clearly disclosed;
- you should not say that a flight or holiday is only on sale for a short time if this is not true;
- if you are an ATOL holder, and some of the products you sell are not ATOL protected, you need to be clear with customers which of your products are ATOL-protected and which are not;
- if you are selling a holiday in separate parts, which is therefore not a package holiday, it must be made clear to the customer with whom they are making a contract for each of the individual elements. You must also be clear about the financial protection that applies to each of these arrangements;
- customers must not be misled about their legal rights or their right to cancel;
- you must not tell customers that you are signed up to a code of conduct if you are not;
- you must not claim that your company, product or practice has been endorsed by another organisation if this is not true.

You must tell customers everything they need to know

3.5 This means that you must provide customers with all the information they need to make an informed decision about the holiday or flight they are purchasing. You must not hide or present in a hard to understand or ambiguous way information that customers need to make a decision about their holiday or flight.

FOR EXAMPLE:

- surprising or onerous terms should be brought to customers' attention and not simply included in 'terms and conditions'. Terms and conditions should be transparent, clear and easy to understand, and make appropriate use of signposting and headings.

- you must also ensure that other important information, such as the level of financial protection, is made clear to consumers; it may not be sufficient that it is only in your terms and conditions, where the consumer may need the information in order to take an informed transactional decision;
- you must pass on information regarding a change to a flight schedule
- you must tell the customers with whom they are making a contract, and whom they will be paying;
- you must tell the customer if there are any charges which you know or should know will be imposed on them by other parties including airport development fees or airport taxes;
- if you are acting as agent for the customer, you must tell the customer if you are receiving commission for making a sale from a particular supplier;
- you must provide any information on the customer's right to cancel the rest of a holiday if a supplier of one of the parts of the holiday **becomes insolvent**. It is particularly important for customers to know if they will still be committed to, for example, their flight booking even if their hotel supplier fails financially and cannot supply the accommodation;
- you must provide any information on the customer's right to cancel the rest of a holiday if a supplier of one of the parts of the holiday **cancels** that part of the holiday. Again, it is particularly important to tell customers if cancellation of one element by a supplier does not mean the customer can cancel the other elements they have booked, even if they are now unable to use them;
- if you charge an administration fee for processing a refund following a cancellation, this should be made clear;
- if you are selling a speculative booking for a flight that has not yet been scheduled, this should be made clear to customers;
- if you are presenting a price that is cached rather than current, it should be made clear that a customer will only receive an updated price when they access the airline's website.

You must act in a professionally diligent way

- 3.6 The law requires you to act in a way that meets the standards of skill and care that are reasonably expected of you which is equivalent to honest market practice in the travel industry.
- 3.7 This is so your customers will know what to expect and will not be put at a disadvantage or misled into making a decision they would not otherwise have taken. Examples of this may be:
- Failing to take steps to ensure that the customer is kept informed of changes to flight schedule or other disruption, in a timely and effective manner. This might be by passing on customer contact details to the airline or by ensuring that updates from the airlines are passed on to the customer without delay;
 - Making it difficult for customers to access their booking with an airline;
 - Failing to have any kind of proper customer service or complaints handling system;
 - Seeking to avoid consumer protection rules or other obligations by persuading customers to waive or forfeit their rights.

You must help customers to make informed and free choices

- 3.8 What are informed and free choices?
- You must not use high pressure selling techniques which put undue pressure onto customers or harass them into buying your products;
 - You must not inflict last minute charges or fees on customers so that they feel they cannot change their minds without losing money; and
 - You must not impose excessive cancellation fees.

You must comply with rules for websites

- 3.9 If you have a website for your business, on that website you should give the full name of your business, your address, your VAT number if you are subject to VAT, and your contact details including an email address. You should also give details of any trade register, professional body or authorisation scheme with which you are registered, alongside any registration number if applicable.

- 3.10 Where a customer buys a holiday or flights from your website, you must make sure that it is clear to them how they can buy your products, and whether they are ultimately buying from you or another company. They should also be allowed to look at and put right any errors before completing their booking, and told which languages they can use to make a booking.
- 3.11 When a customer makes a booking from your website, you should send an email telling them that you have received their booking.

4 REMEMBER:

Terms and conditions should be clear, fair and balanced

- 4.1 Where your business uses its own standard terms and conditions when making a contract with a customer you must not use unfair terms or terms that disadvantage the customer. This means that terms should be drawn up in such a way to respect the interests of customers and recognise that they are generally in a weaker bargaining position.

How do I know if we use standard terms and conditions?

- 4.2 Standard terms are often referred to as the 'small print' and set out the terms on which you sell a flight or holiday to a customer. They are terms which are not individually negotiated.

What are the requirements?

- 4.3 If you do use standard terms you must not include terms that are difficult to understand or put customers at a disadvantage. For example the terms below are unlikely to be considered as fair to customers:
- terms which allow the holiday supplier a wide right to cancel without giving the same right to the customer;
 - restricting a customer's rights when a change or cancellation occurs
 - unfairly limiting a customer's rights to compensation;
 - requiring the customer to declare they have read or acknowledged the terms and conditions where this may not be true ('read and understood' clauses);
 - seeking to rely on 'read and understood' clauses in the event of a customer complaint;
 - binding the customer to terms which are not transparent or clear.
- 4.4 These are only a few examples of the type of terms that are considered to be unfair to customers, a further, although not exhaustive, list of

terms that are likely to be unfair is available in the main guidance document .

- 4.5 Where you provide terms and conditions applicable to the contract you must make them available in a way that allows customers to store and reproduce them. This can often be done by posting or emailing a copy of the conditions.
- 4.6 You must not include terms that try to get around the requirements of other legislation that sets out conditions for selling flights and holidays to customers, such as the Package Travel Regulations, or that exclude your legal liability to customers.

What if we don't use standard terms?

- 4.7 In many cases travel agents will not have formal standard terms and conditions or make contracts with consumers. However, there may be conditions around the bookings you make, or other applicable conditions in which case you need to ensure you do not disadvantage the customer. If you are unsure whether you contract on standard terms you should seek advice.

5 REMEMBER

If your business does not comply with the applicable regulations we may take enforcement action

- 5.1 The OFT and CAA would generally seek to ensure compliance with relevant legislation through consultation with any business which we consider may not be complying with the legal requirements of the consumer protection legislation. This means the CAA or OFT would usually contact your business setting out their concerns about your business practices, and give you an opportunity to engage with us to discuss the practices with a view to amending them. We would always recommend that you seek independent legal advice, and we will consider any representations you provide to us. It should be noted that other enforcers, including Trading Standards Services, are also able to take enforcement action.
- 5.2 Our aim is to seek compliance with the relevant legislation and to do this through consultation with your business. We may ask your business to sign undertakings not to repeat the practices of concern to us. However, in some more serious situations we also have civil powers to seek a court order requiring your business to cease certain practices. Before we use any of our powers we must ensure we meet our own prioritisation and enforcement principles. Information on these can be found on CAA/OFT websites. In addition to civil powers the OFT can, in very serious situations, take criminal prosecutions. However, these powers are reserved for only the most serious breaches of some consumer protection legislation. More information on both the CAA and OFT's enforcement powers and the way they can be used is available in the full guidance document.

Further reading

“What is a package?”, A guidance note for travel organisers, Department for Business, Innovation and Skills, January 2008, URN 08/570
<http://www.bis.gov.uk/files/file43845.pdf>

Pricing Practices Guide, Guidance for traders on good practice in giving information about prices, November 2010, URN 10/1312
<http://www.bis.gov.uk/assets/biscore/consumer-issues/docs/p/10-1312-pricing-practices-guidance-for-traders>

Committee of Advertising Practice, Help Note - Travel marketing
http://www.copyadvice.org.uk/~media/Files/Copy%20Advice/Help%20Notes%20new/travel_marketing.ashx

Guidance on unfair terms in package holiday contracts, Office of Fair Trading, March 2004, OFT668
http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft668.pdf

Distance Selling Hub, Office of Fair Trading:
<http://www.offt.gov.uk/business-advice/treating-customers-fairly/dshome/;jsessionid=6FBD97DE6E835C3B1A5D8AAB23FAAE07>

“Consumer Protection from Unfair Trading”, Guidance on the UK Regulations implementing the Unfair Commercial Practices Directive, Office of Fair Trading, Department for Business, Enterprise and Regulatory Reform, May 2008
http://www.offt.gov.uk/shared_offt/business_leaflets/cpregs/oft1008.pdf

Consumer Enforcement Strategy, Civil Aviation Authority, 2012
http://www.caa.co.uk/docs/2107/Interim_Consumer_Enforcement_Strategy.pdf

Commission guidance on the Unfair Commercial Practices Directive (implemented by the CPRs in the UK)
http://ec.europa.eu/consumers/cons_int/safe_shop/fair_bus_pract/ucp_en.pdf

DFT’s Advertising of Prices Market Study
http://www.offt.gov.uk/shared_offt/market-studies/AoP/OFT1291.pdf

OFT guidance on Unfair Contract Terms
http://www.offt.gov.uk/shared_offt/reports/unfair_contract_terms/oft311.pdf