Your Holiday Legal Rights:
The Expectations and Responsibilities of Tour Operators Following Accidents Abroad
Introduction

When booking a package holiday through a tour operator, you trust them to look after you throughout your stay. They will take care of the most important aspects of your trip - such as flights and accommodation, maybe even food and drink - but just how far do these responsibilities stretch?

If you were to suffer an injury on holiday, what role would your tour operator be expected to play? Would they be held responsible for the injury, and could you make a claim for compensation against them? These are some of the questions we at the Personal Injury department at JMW aim to answer in this report. We have conducted a survey to find out just what holidaymakers expect from their tour operators, comparing these preconceptions against the reality of the legal responsibilities to which operators must adhere.

It’s supposed to be a fun, relaxing and rejuvenating experience, but a holiday abroad can take a turn for the worse if you or one of your loved ones are involved in an accident. The distress of suffering an injury can be magnified on holiday - you may be a long way from home, unable to speak the language of the country in which you are staying and unsure of the treatment available to you. It therefore helps to have someone from home placing a reassuring arm around you and fighting your corner - and it feels only natural to turn to your tour operator to take on that role, taking care of your injury as well as your holiday. But should we automatically expect to be taken care of by tour operators, and if so, to what level?

Our survey has highlighted the prevalence of accidents abroad. We discovered holiday injuries are far from uncommon, with many trips blighted by an unexpected event. Indeed, it was shown that one in 20 people have suffered an injury while on a getaway, and more than one in ten know somebody who has been hurt overseas. The severity of these injuries varies from the fairly minor to the very serious, from stubbed toes to broken legs. It is therefore essential that people are cared for properly, have access to the right treatment and can travel home if need be - but whose job is it to ensure this happens?

By comparing the expectations of holidaymakers with the legal responsibilities of tour operators, we aim to bring greater clarity to this murky area of the law, providing a valuable guide for anyone heading overseas.
What is a tour operator?

To explore the responsibilities of a tour operator, it is first important to define just who these companies are and what they actually do. After all, many different companies can be involved in a holiday - such as the travel agent, the airline and the accommodation provider - and understanding who does what, particularly in a legal sense, can be a little confusing.

A tour operator is a company that specialises in package holidays, creating and offering these packaged tours and various travel activities to their customers. They do this either through travel agencies or directly via the internet. There are various firms that come under this banner, with TUI (Thomson), MyTravel, Thomas Cook and First Choice among the most widely used.

Typically, a tour operator will organise the tour and travel aspects of a holiday. For example, this might include a flight to the destination and the transfer between the airport and the hotel, as well as the same for the return journey. Additional extras might include activities such as trips to popular attractions.

A tour operator will usually compile their holiday destination packages by purchasing the individual components in bulk and then pulling them together. These might include airline tickets, hotel rooms, restaurant plans and sightseeing excursions, which can be sold at a profit by bringing them together in one offering.

This differs to the role of the travel agent, which is to bridge the gap between the tour operator and the customer. The travel agent therefore serves to bring these different elements together, making it easier for the customer to find and book a package best suited to them. Once a holiday booking has been made and paid for, holidaymakers will then find themselves wholly in the hands of the relevant tour operator.
What do people expect from a tour operator?

When you go on a package holiday, you place your trust in the tour operator you book through. However, there may be some misunderstanding with regard to the actual legal obligations of the tour operator.

Our expectations as holidaymakers do not always match up to these legal requirements, presenting a disparity that can be all-important when it comes to the issue of what to do when things go wrong on holiday, such as when an accident occurs.

We therefore conducted a survey to find out just what people expect from a tour operator in this scenario. We discovered that 73% of the 676 respondents involved in the survey have been on a package holiday and 60% have taken part in activities or events provided by their operator while on holiday.

Respondents were then asked what support they would expect to receive from the tour operator should they be injured on a package holiday. They gave the following answers:

- Help with travel arrangements - 76%
- Help with medical assistance - 75%
- Help with contacting relatives or loved ones - 63%
- Help with insurance matters - 61%
- None of the above - 16%

These findings show the high expectations holidaymakers have of their tour operator. More than three-quarters (76%) said they would expect to be assisted with travel arrangements (such as an early return flight home) and three-quarters would anticipate help with any medical assistance required. This means the vast majority assume their tour operator would go to significant lengths to help them in their hour of need. With 63% expecting help with contacting relatives or loved ones, almost two-thirds of respondents foresee their operator going the extra mile to make sure everything is taken care of. Additionally, 61% of those questioned would expect help with insurance matters, such as contacting and dealing with an insurance company immediately after an accident.

Notably, just 16% told us they would not expect help with any of the tasks mentioned. This illustrates the high level of responsibility placed on tour operators when it comes to looking after a customer’s welfare. Whether these expectations match realities, especially in the legal sense, is something we turn to next.
What are the responsibilities of tour operators?

As evidenced by our survey, people have very high expectations of their tour operator. Many foresee the company will help them out with various aspects should they encounter difficulties - but what are the actual responsibilities of tour operators?

If you have an accident when on a package holiday abroad you may be able to claim compensation directly from the tour operator through the Courts of England or Wales, rather than pursue action against the foreign hotel or other supplier. This is an important piece of consumer protection as it enables easier access to justice when something goes wrong on holiday. However, to understand this we must first understand the legal definition of what a package holiday is.

From the 1st July 2018, the Package Travel Directive will be implemented, replacing the old 1992 Package Travel Directive. This is in response to the increasingly digital world where more and more holidaymakers are booking their holidays online. The Directive expands the definition of a package holiday to provide additional consumer protection, meaning agents who organise and put together a package for a customer will be responsible for the services included within the package.

For example, the definition will now include holidays:

- Where the seller uses the term “package” or a similar term.
- Where the seller offers a total price for different services.
- Where the holidaymaker has bought separate services from separate providers through linked online booking systems.

If details and credit card details have been transferred between providers, it will give more holidaymakers the right to seek compensation back home against the organiser of their trip meaning they are better protected.

The provisions of the Directive will only apply to bookings made on or after 1st July 2018, the existing 1992 Package Travel Regulations will still apply to bookings before that date. Our expert team can advise and guide you if you have had an accident whilst abroad to help you to seek redress.

In addition to the regulations, case law has sculpted the responsibilities of tour operators following an accident. These include:
Hone vs Going Places Leisure Travel Ltd

This case confirmed that, under regulation 15 of the Package Travel Regulations, there is no strict liability on the tour operator - it remains the prerogative of the claimant to prove the tour operator has breached the duty of care owed to them, unless the other party to the contract has opted to tie itself to an absolute obligation.

This means that if you suffer an accident abroad, you and your lawyer must reasonably prove that the tour operator is to blame. For example, if you slip near the hotel pool or fall over in your hotel bathroom, it is your responsibility to demonstrate there were not appropriate measures in place to ensure your safety.

Codd vs Thomson Holidays

Following injury to a child when attempting to close the door of a lift in a Spanish hotel, it was decided that while English law was applicable in determining whether or not the Spanish hotel management had been negligent, following English safety regulations is not a legal requirement in Spain.

This means that if you suffer an injury abroad, you and your lawyer are going to need to demonstrate that your accident occurred because of a shortfall in the local safety regulations.

Wilson vs Best Travel

This case centred on a man falling through glass patio doors while holidaying in Greece. It was judged that the doors only needed to comply with Greek safety regulations, not English regulations that require re-enforced safety glass is used in glass doors.

As before, this means that making a claim for an accident you have suffered in another country has the best chance of being successful if the local safety standards have not been met. This is because the tour operator is not obliged to ensure the safety standards in other countries measure up to English ones.
These cases all highlight the difficulties facing those who make a compensation claim against a tour operator, after suffering an accident abroad especially the complexities involved in proving that the tour operator was at fault, and complications surrounding local laws. This does not mean, however, that successful cases cannot be brought against a tour operator. Each case is unique and each set of circumstances will dictate whether or not blame can legally be apportioned to the tour operator. In order for the operator to be deemed responsible, however, the incident must have happened either:

• At the hotel complex;
• or as part of an activity provided as part of the package holiday.

Proving whether or not a tour operator is liable for an accident abroad can therefore be tricky. But what about their responsibilities in the immediate aftermath of an injury? The survey showed that people expect a lot from their tour operator in the event of an accident, but do these expectations match realities? Are operators required to help with travel arrangements? Medical assistance? Contacting relatives or sorting insurance matters?

We spoke to ABTA, and the travel association revealed the simplest explanation is that tour operators are indeed responsible for the arrangements listed, but - and this is important - only when the injury occurred during an activity or in a place in which they were involved in its organisation. This is because the tour operator has a duty of care to protect customers through the services they provide. For instance, a tour operator would be responsible for the arrangements if the accident took place on an excursion, in a hotel or on a coach that was booked through the tour operator. However, the tour operator would not have the same responsibilities if, for example, a customer injured themselves on a drunken night out, or if they missed their flight. Therefore, if a person was injured during an activity organised by the tour operator, or in the hotel the operator booked, or on a journey the operator arranged, the company would be required to make the appropriate travel arrangements, provided this is needed. Additionally, the provider would also be obliged to contact relatives - although this would most likely be done via the police.

Tour operators will always encourage holidaymakers to take out travel insurance prior to the trip. This is very important to operators, not only because it makes life that little bit easier for them - customers will turn to their insurance providers to sort out many matters - but because it is also beneficial for the customers themselves.

If a person does not have travel insurance, it is possible the tour operator will arrange medical assistance. However, the operator will hope it does not reach this stage, as the individual will have been advised to take out cover beforehand. Likewise, when it comes to help with insurance matters following an accident, a tour operator may assist, but they will always recommend cover is obtained prior to the trip.

It is perhaps not surprising, therefore, that tour operators are incredibly careful when choosing the companies they want to work with. An operator will likely perform in-depth research to ensure everyone it teams up with - from the coach driver to the management of the hotel - is of the utmost repute. This therefore minimises the likelihood of a customer being injured on holiday, and minimises the risk of the operator being required to involve themselves should an accident occur.
If an accident does take place and it has nothing to do with the tour operator, for example, an individual hurting themselves on a night out not organised by the operator, the operator will not be required to provide the same level of assistance. They may help to an extent, such as contacting loved ones, but this is not an obligation.

However, it may still be possible to pursue a claim for compensation against the company or person directly responsible, so you should seek urgent legal advice.

Joanne Brine, Partner and travel claims expert from JMW Solicitors, comments:

“We welcome the new Directive as it will mean more holidaymakers will have the right of redress against the organiser of their trip. The ability to bring a claim through the Courts of England and Wales is an important right to ensure legal redress and consumer protection. “

“JMW’s survey shows that holidaymakers put trust and faith in their tour operators and book a package holiday expecting there to be help available when they need it. The worrying results of the survey show this isn’t always the case. Our goal is to ensure that clients who are injured, wherever their accident has happened, are able to access compensation and rehabilitation to get back on track.”
JMW: Our experience

Our survey found that just 4% of people who suffered an accident on holiday were contacted by their tour operator on their return to the UK, while 77% were not, and 19% were unsure if they had been. As holiday accident specialists, we at JMW have dealt with many clients who have been injured abroad. Sadly, our clients’ experiences are supportive of our survey, showing that the level of assistance received from tour operators after an accident abroad is minimal.

Mr S, wrist injury, £23,000

Mr S suffered a wrist injury whilst on holiday in Turkey with his family. After slipping on wet stairs and falling down, he fractured a bone in his wrist and damaged the cartilage. Mr S explained to us that the steps led to an underpass that connected his hotel to facilities such as a pool and a snack bar. A member of the hotel’s staff had hosed the steps down, leaving them soaking wet. There were no signs indicating that the steps had been hosed down and would therefore potentially cause a slipping hazard, nor anyone warning about the potential danger of the water on the steps.

The next day, Mr S reported the accident to the tour operator’s representative at the hotel, who made a note of the incident. However, they did nothing else to assist Mr S. This meant that arranging any medical treatment was left to Mr S and his family.

Mr S did not hear from the tour operator on his return to the UK. The tour operator denied responsibility for Mr S’s accident, suggesting there was no evidence the area he had fallen in had been unsafe, and that the resort complied with local health and safety standards. After gathering evidence to support Mr S’s accident, including independent medical reports and witness statements provided by individuals who had seen the accident, we were able to ensure that Mr S was awarded £23,000 compensation for his accident; something that could have been avoided if adequate warnings about the area had been in place.
Mrs M, broken arm, £22,000

Mrs M was on a package holiday and slipped on a hotel bathroom due to a defective showerhead fixture, which leaked water on the bathroom floor, making it wet and slippery. She appeared to have broken her left arm as a result of the fall.

Despite Mrs M complaining to the hotel about the defective showerhead three days earlier, nothing had been done to fix it. No member of staff visited the hotel room to inspect the showerhead, even after the incident.

Mrs M had to visit a hospital abroad and incurred expenses due to the nature of her injury. She was not assisted with arranging transport to or from the hospital, nor did anybody visit her in hospital. On her return home, Mrs M had to spend several weeks off work in order for her injuries to heal.

After a protracted legal case, Mrs M was awarded £22,000 in compensation for the injury.

Mrs J, soft tissue injuries to back, shoulder and leg, £3,900

Mrs J is a disabled lady who had booked assistance getting on and off an aeroplane as part of her holiday. This assistance had been booked at the check-in desk of her airline, while the flights themselves had been arranged as part of a package, through a package tour operator. Unfortunately, she was not aided when disembarking the plane on her return to the UK, as the cabin crew informed her she would not be in requirement of such assistance.

Mrs J stumbled part-way down the stairs from the aircraft to the ground, jarring her back and shoulder and hurting her leg. Although there had been two members of staff waiting for her at the bottom of the stairs, the lack of assistance descending them caused Mrs J trouble. These staff members told Mrs J that the cabin crew had informed them she was able to descend the stairs on her own, which was clearly not the case and was contrary to the information they had been given.

Mrs J overheard the two members of staff who assisted her into the airport mention that a ‘form’ would have to be completed - but she was not given any further detail about what the form related to, nor offered a copy of it.

No further communication between Mrs J and the tour operator, nor the airline, occurred - apart from that between Mrs J's solicitor and the legal representatives of the airline. After an independent medical examination demonstrated Mrs J's injuries and how much time it would likely take for her injuries to heal, we were able to agree a compensation payment of £3,900 in respect of the injuries.
What should you do if you have an accident abroad?

If you, a family member or friend is injured on holiday, it is important you act quickly to help ease the difficulties involved in the process of making a claim at a later date.

Your first priority will be to ensure the injured person receives the correct medical attention and is given the best possible chance of recovery. Once this is arranged, the next port of call is to make sure you properly report and record the incident.

Reporting the accident as soon as possible is essential. You should waste little time in speaking to the package organiser’s representative in the resort to bring them up to speed with exactly what happened. Failing that, you should contact the tour operator’s head office in the UK, or the management of the hotel in which you are staying. If there is an accident book where the incident took place, be sure to record the events accurately, requesting a copy for yourself.

Indeed, it is important to keep a record of as much information as possible, any of which might help further down the line if you want to make a claim. The best ways to record an injury abroad are:

- Request and keep a copy of your medical report
- Keep receipts of any medical charges incurred
- Request a copy of the doctor’s report
- Take photographs of your injuries and of what caused the accident
- Take note of the scene where the incident took place
- Take down the names and addresses of anyone who may have witnessed the event
- Request copies of any other relevant medical notes the hospital holds in relation to the accident

Travel insurance is designed to provide financial protection against mishaps abroad, and if you have taken out a policy, you should get in touch with the travel insurance provider immediately. Our survey found that 76% of respondents take out travel insurance every time they go away, 11% do so most times, 5% sometimes and 8% never do.

The vast majority of us therefore identify insurance as an essential purchase. By speaking to your insurance provider in the immediate aftermath of an injury, you will be advised on the best way to go about getting the right assistance abroad and, if required, back home.

If you do decide to make a personal injury claim, it will likely begin after you have returned home from your holiday. This is when people usually seek legal advice on how to make a claim, guidance that is essential given the complexities of holiday accident claims. There are various losses that can be claimed for as part of a personal injury compensation claim. Not only does this include financial compensation for an injury, it also includes any out of pocket expenses, compensation for activities you have missed out on as part of your holiday and even loss of earnings if the injury kept you out of work on your return to the UK.

It is therefore imperative you have access to professional legal advice so you know the best route to take to ensure you get the compensation you deserve. Suffering injury abroad can be a terrible experience, especially if it was not your fault, but compensation can go some way to repairing the damage done. It is also important not to delay this process, as there may be time restrictions for making your claim.
Conclusion

When signing up with a package tour operator, you expect to receive a certain amount of protection during your trip. For your own peace of mind, it is important you understand just how much protection tour operators are legally required to provide.

Suffering an injury abroad can be a traumatic experience, and it can be even more upsetting to be involved in an accident in a foreign country and have little idea of the next steps to take. Your tour operator is there to help you, but it is useful to differentiate between what you would like them to do, and what they are legally required to do.

While many people expect their tour operator to provide a high level of assistance in the event of a holiday accident - such as helping with travel arrangements, medical assistance, insurance matters and contacting loved ones - the reality is not so clear cut. Tour operators are essentially responsible for these matters when the injury took place during an activity they organised, or in a building they booked, such as during an excursion or in a hotel. This responsibility does not extend, however, to incidents for which the tour operator was not involved in the organisation, which means that organising a trip abroad with a tour operator is not a cover-all to ensuring your safety and well being is provided for. For example, offering help following injuries that occurred during activities not organised by the operator, and assistance in the instance of missed flights is not an obligation of the tour operator.

Making a personal injury claim following an accident abroad is not always straightforward either. This is why it is so important to speak to expert solicitors who can help guide you through this difficult process. It can be problematic determining where the fault lies following a holiday accident, and local laws and language barriers can serve to muddy the waters further. Using an experienced law firm will ensure you have every chance of getting the outcome you desire.

We hope you are not unfortunate enough to suffer an accident while on holiday. However, at JMW we are highly experienced in dealing with holiday accident personal injury claims and can help you if you find yourself wishing to make one. If you would like to find out more about how we can help, get in touch with our expert team. The expectations and responsibilities of tour operators may remain a murky area, but we are here to shine a light and guide you through.
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