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Quantifying holiday claims

In part one of a two-part consideration, Kirsty McKinlay and Amy Rollings examine damages recoverable from package holidays



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'Holiday claims are an exception to the general rule that in a contract claim, a claimant can be compensated for the "disappointment, the distress and the upset and frustration caused by the breach".'

Recent stories of Ryanair pilot shortages and Monarch's collapse have highlighted the plight of holidaymakers who, having booked a much-needed holiday, find it falls far short of their expectations. Lord Denning MR in *Jackson v Horizon Holidays* [1974] said:

People look forward to a holiday. They expect the promises to be fulfilled. When it fails, they are generally disappointed and upset. It is difficult to assess in terms of money, but it is the task of the judges to do the best they can.

The purpose of this article is to:

- discuss quantifying damages recovered in travel cases that fall under the Package Travel Regulations 1992 (PTR 1992); and
- consider the practicalities of evidencing the applicable law in claims that do not fall under the PTR 1992 where foreign law is applicable.

This part will look at claims which are included by the PTR 1992.

Damages in travel cases under the PTR 1992

All claims brought under the PTR 1992 are claims for breach of contract. The damages are divided into three categories:

- general damages (including loss of enjoyment);
- diminution in value/damages for loss of bargain; and
- special damages.

Loss of enjoyment

Holiday claims are an exception to the general rule that in a contract claim, a claimant can be compensated for the 'disappointment, the distress and the upset and frustration caused by the breach' (*Jarvis v Swans Tours Ltd* [1972]). The principal reason being, that the purpose of the contract is to provide a measure of peace of mind or freedom from distress.

In practice, loss of enjoyment claims are notoriously difficult to accurately quantify, however, there are two principles to note:

- Damages are not to be determined by reference to the sum spent on the holiday: *Scott v Blue Sky Holidays* [1985]. Therefore, regardless of whether a claimant

Ichard v Frangoulis
[1977] 1 WLR 556

Jackson v Horizon Holidays
[1974] EWCA Civ 12

Jarvis v Swans Tours Ltd
[1972] EWCA Civ 8

Milner & anor v Carnival plc
[2010] EWCA Civ 389

Scott & anor v Blue Sky Holidays
[1985] CLY 943

