



Brief cases

The McCarthys' rooms were well below par

Travel firm pays £1,220 following sub-standard holiday

VALERIE'S STORY

Valerie McCarthy wanted to celebrate the end of her medical treatment for cancer with a once-in-a-lifetime holiday for herself and husband, Frank. They settled on two weeks in Kenya – a six-night safari followed by a week relaxing at the Papillion Reef Hotel, near Mombassa, in a room with a sea view. Valerie went through her requirements in detail with the Hayes & Jarvis rep and, assured that the £2,626 package would be four star all the way, she booked it.

The safari went without a hitch, but the horrors that lay in wait at the hotel left the couple shocked and appalled. Their room was filthy (there was even chewing gum on the bedpost) and smelt of sewage.

The towels were dirty; the sheets looked as if they'd not been changed; the curtains were badly stained and hanging off the rail; light fittings were brown where they'd been singed; some of the furniture was broken and the TV and fridge had been removed.

The couple complained and were moved to another room. But, again, the sheets and towels were dirty and the curtains stained. Bits of plaster were falling off the ceiling and the ceiling fan was unusable. Moreover, there was a hole in the wall where the air-conditioning unit had been badly fitted.

Valerie and Frank asked to be moved again but there were no other rooms available. They were told they could pay extra to be moved to a different hotel – but



Frank's and Valerie's £2,626 holiday didn't live up to its promises

the rep warned them that the rooms there were inferior and had no sea view. They decided to stay put.

When the couple got home, they contacted Hayes & Jarvis. It offered a £150 holiday voucher, which they rejected. It then offered a cheque for £150 instead. The McCarthys again said no and Valerie contacted Which? Legal Service.

Our lawyers advised her that she had a claim against Hayes & Jarvis for breach of contract and breach of

The Package Travel, Package Holidays and Package Tours Regulations 1992 as it had failed to provide the holiday contracted for due to the problems with the room. Hayes & Jarvis wouldn't settle, so we advised Valerie on how to prepare to take her claim to court.

RESULT

Before the case was heard, Valerie received a cheque from Hayes & Jarvis for £1,220.

WHAT TO DO IF YOUR HOLIDAY DOESN'T LIVE UP TO EXPECTATIONS

STEP ONE Complain there and then

If your room is not up to standard, complain straightaway to your rep or, in their absence, to the manager, and ask to be moved to another room. Make sure that you put your complaint in writing and get a copy of any complaint form. It's also a good idea to phone or (better) to fax the tour operator.

STEP TWO Gather your evidence

It's a good idea to get evidence to back up your complaint in the event of any later claim. Such evidence includes taking photos or video of the state of the room as you found it. Also, talk to other guests to find out whether they are similarly unhappy and get the names and addresses of any who are willing to back you up.

STEP THREE Know your options

If the tour operator won't move you, or an alternative offered is not up to scratch, you can ask to move hotels. If it refuses, you could pay to move and claim the cost when you get home. If there's nowhere to move to, and the situation is such that you couldn't be expected to stay, you can ask to be flown home.

STEP FOUR Once you get home

Write to the tour operator immediately, setting out your complaint (include a copy of the complaint form, photos and so on). If it belongs to the Association of British Travel Agents (Abta), it must respond within 28 days. If you're still not satisfied, you can go to the small claims court or arbitration. Decisions at arbitration are binding.

STEP FIVE Getting compensation

There are three basic things you can claim for:

- loss of value (the difference between the value of the holiday you got and the one paid for)
- out-of-pocket expenses (the refund of any reasonable expenses incurred as a result of the operator's breach), and
- loss of enjoyment (for your disappointment).

Two holiday cases from the files of our Which? Legal Service consumer lawyers, plus topical legal advice. This month: lost, damaged or delayed luggage



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Change of hotel ruins a £678 break

Your rights if a package deal changes

CHRIS'S STORY

Chris Cooper's holiday plans received a major setback when his tour operator changed the hotel. The company twice refused a refund, but with the help of Which? Legal Service he finally received all his money back.

Chris booked the £678 four-day break to Budapest with Riviera Travel, Staffordshire, as a birthday surprise for his wife, Helen. He chose the package specifically because he wanted to stay at the

WHAT THE PACKAGE TRAVEL REGS SAY

STEP ONE

Before you go

If the tour operator makes a significant change to your holiday, under regulations 12 and 13 you are entitled to:

- a substitute package of equivalent or superior quality
- a substitute package of lower quality for less money, or
- a complete refund.

You may also be entitled to compensation.

STEP TWO

While you're away

Under regulation 14, if a significant part of what you contracted for isn't provided, the organiser must make suitable alternative arrangements at no extra cost. Where this isn't possible, the organiser should fly you back to your place of departure or to another place to which you have agreed.

five-star Budapest Hilton, which he'd visited before and knew to be in a superb location.

But when the tickets arrived, three weeks or so before they were due to go, Chris was devastated to see they had been booked into the Hotel Intercontinental. This was also

five star but it wasn't in the location he wanted, so he asked for a refund. Riviera refused, pointing to a clause that said it had the right to change the hotel provided that the substitute was of the same overall standard. Chris came to Which? Legal Service.

Our lawyers told Chris that, as Riviera had made a significant change before departure, under the Package Travel, Package Holidays and Package Tours Regulations 1992, he was entitled to a full refund. Moreover, the clause Riviera was relying on was an unfair term under the Unfair Terms in Consumer Contract Regulations 1999, since it was attempting to exclude Chris's rights under the package travel regulations.

Chris again requested a refund. When Riviera again said no, we advised Chris on how to issue a claim.

RESULT

Three weeks later Chris received a full refund, plus £22 interest.



The tour operator changed Helen's and Chris's hotel booking

Legal tip

Mishandled luggage

Bags of trouble

What you can do if your luggage isn't at the airport to meet you or it arrives damaged or with items missing

Loss, delays, damage

If your baggage is lost, delayed or damaged, you can ask the airline to compensate you for the contents: you'll need to fill in a property irregularity form before you leave the airport. The liability limit for each passenger is currently around £800. But if you know the contents are worth more, you can make a 'special declaration of interest in the delivery of your luggage' before you fly – this means, you get the airline's agreement as to what the contents are worth. Airlines may charge for this but at least you'll be covered in full. Also check what cover your contents or travel insurance provides.

Time limits

The length of time you have to claim compensation is:

- seven days for damaged bags and missing items, or
- 21 days from the time the bag is finally delivered for delayed baggage.

There is no set time limit for lost luggage but you should write to the airline as soon as possible if your bags are still missing after 21 days.

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