



National Helpline Number:
01217478100

Address:
 HolidayTravelWatch
 PO Box 12768
 Birmingham. B28 1AQ

www.holidaytravelwatch.com

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Key Travel Tips:

- Always check visa requirements before you travel - try to get written confirmation, from the Embassy of the country you intend to visit, before you go
- Suffered a flight cancellation, were you denied boarding, or had your flight delayed? Check out your rights under EU Directive 261/2004
- If you were ill whilst on holiday, see your GP or Environmental Health Officer as soon as you return to the UK

Travel Consumer Rights Under Threat

You would never know! The mainstream press is silent on the issue! How could such an important matter, as the deconstruction of travel consumer rights, fail to be news? Since the introduction of the Package Travel Regulations in 1992, many thousands of ordinary people have enjoyed the protection of this law, and received compensation for failures in their holiday contracts. All that now looks set to be lost. Running alongside this issue, is the recently ordered review of all Consumer Directives. HolidayTravelWatch submitted its own comments on the Regulations, highlighting how the Consumer has been disadvantaged by their operation

and advising how these vital Regulations should be strengthened. In light of separate developments, such a review now seems to exist in a different parallel. The threat comes from several areas. Firstly the advance in selling technologies, with airlines freely selling packages, without consumer protections, has meant that this is the first generation that can literally 'click n'go'. This major threat to established travel operators, has created a threat to their sales. Secondly, the Travel Industry raised a legal challenge against the CAA about their proposed ATOL bonding changes. The CAA lost the case, freeing agents to sell holidays without protec-



tive bonding. The case also came with a decision of what constitutes a Package Holiday. There is now an audible gallop by the Travel Industry to deconstruct Package Holidays, and so remove them from the cover of consumer protection. Is the next step to remove package holidays from the protection of existing regulations? Politicians should take heed of this silent revolution - ruined holidays will mean lost votes!

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Welcome to the Inaugural Issue of Get'AWAY

For many years, Brenda Wall had a dream of reaching out to a wider audience, beyond her website. Brenda communicated with many thousands of Holidaymakers, and guided many of them, toward resolving their claims against British Tour Operators. As many supporters

know, Brenda sadly passed away in 2005, following a lengthy illness. It is a fitting tribute to her memory, to launch this Travel-Zine, using one of her favourite expressions, as the title of this publication. Whenever she was confronted with an unbelievable fact or story,

she would often be heard to state - "get'away"! Her dream was to create a meaningful forum, to remain in contact with those who maintained faith in her, and in HolidayTravelWatch. On behalf of Brenda, 'Welcome to the First Edition', 'Welcome to 'Get'away'!

To Package or Not to Package?



“As far as I was concerned, this was a law that needed incorporating into British Law, this would at least ensure that someone was answerable for standards toward holidaymakers”

In the autumn of 2005, we produced an article, highlighting the change in selling technologies for holidays.

We considered that such a change, whilst leading to a greater flexibility and freedom in holiday choice, also posed a threat to the hard fought consumer rights enjoyed by today’s holidaymakers.

In the latter part of 1992, before this Organisation was formed, Consumer Safety International (CSI), lobbied the then Conservative Government for the implementation of an European Directive, to provide for Consumer Rights in Holiday Contracts.

The Chairperson of CSI, Molly Maher, had experienced a personal tragedy. Her son was killed, and her daughter was seriously brain damaged, following Carbon Monoxide poisoning, acquired during their stay in a Tenerife apartment block.

CSI’s lobbying, and the demands of European Law, eventually saw the introduction of the Package Travel Regulations.

As Molly states, “We had no choice, our family had been devastated, I did not want any other family to experience the terror of losing loved ones abroad. As far as I was concerned, this was a law that needed incorporating into British Law, this would at least ensure that someone was answerable for standards toward holidaymakers”.

The true effect of the power of the Regulations were not felt until the first case involving our Founder Brenda Wall against First Choice. That

case led to the formation of HolidayTravelWatch and the then new phenomena of the ‘group action’.

There have been many bitter battles between this Organisation and the Travel Industry, and on reflection we have to ask the question, why? Was it wrong to highlight a new law, that provided for an ordered and sensible approach, in the conduct and resolution of such contractual disputes? Most sensible people would agree that in order to prevent a failure to deliver a contract as agreed, or where illness or injury occurs, there should be a clear set of obligations and responsibilities, on both parties in a holiday contract. The reaction to HolidayTravelWatch was remarkable. Consider this; the Travel Industry provides for some 60 million journeys each year, by contrast HolidayTravelWatch deals with 30,000 holiday complaints. In the past, our work was derided and subject to legal threats, injunctions and complaints to the High Court – but still the complaints came, and with it, the necessity for this Organisation to guide and advise ordinary people of their rights.

Is it right that any Corporate Body should seek to usurp the will of Parliament, or for that matter the will of the European Parliament? Whether you like it or not, European Law is paramount and overrides our domestic laws. Our lead article provides comment on how the present situation now threatens the Package Travel Laws, and the fact that little publicity is being given to a major threat to travel con-

sumer rights.

In last year’s article we stated, “It is a timely reminder of the problems that the consumer will face in this brave new world, where lines are becoming blurred, temptation may arise to cut the corners of information and consumer rights – all to the detriment of the ordinary holidaymaker”.

There are some who will say in the present climate, ‘let the courts decide, lets wait for the Court of Appeal to rule in the CAA case’. We say, it may now be too late, perhaps the genie is out of the bottle. Should the consumer be exposed to market forces or the will of Parliament?

As if to illustrate this point, we need to examine the current thinking of some of the leaders within the Travel Industry. These comments were made as a result of the court case between the Travel Industry and the CAA, over the principal question of travel agents bonding air holidays.

In the Travel Weekly (23.3.06), the Chief Executive for TUI has stated that that it was their intention to ‘ditch’ ATOL protection for holiday-makers.

He stated, “We’ve got to start challenging the ATOL ruling because it’s a complete nonsense....it’s becoming a big problem both from the customer point of view and our point of view....we can’t risk the business....it could take several years for the CAA to sort this out and we’re not going to hang around”. He indicated that they would like to abandon ATOL cover for Consumers

To Package or not to Package? (contd)

by September 2006, and that they would restructure their health & safety department 'to look after customers'.

In a further article in Travel-Mole (4.5.06), the Chief Executive of Thomas Cook said, "If we split up our packages and present them to the customer as different components we can get around the bonding laws – we have given it a lot of thought and we will do it no question. It will happen within the next two years. It is not something the customer is worried about and we're not prepared to put up with the situation which is costing us a lot of money".

Our concern is, bonding gone today, the Package Travel Regulations tomorrow? It is wholly wrong that bonding should be avoided, and we ask therefore, which is the best guarantor for health & safety in holiday contracts, the law or a restructured health and safety department?

Recently, we received information about a hotel that allowed lead based airgun pellets to be used in and around a swimming pool, close to the children's area. The holidaymaker found his daughter about to swallow several of these pellets, but managed to prevent her from doing so. He simply wished to 'advise' the tour company of this potentially serious breach of health and safety. Their response in resort was dismissive; when he returned he asked for our help. We contacted the major tour operator in question, and after several phone calls, we were directed to the correct 'head office'.

We were then told that no director held responsibility for health and safety!

We established that a senior executive held that responsibility for the entire group, therefore a message was left for him to contact us directly. We discovered that it was a surprise to the executive that this activity was taking place next to a pool. We ask again, who is the best guarantor for safety, the law or the tour operator?

Secondly, it has been said that the customer is not worried about the lack of bonding protection, or for that matter, the protection of the Package Travel Regulations. How do we know this? Has there been an extensive and widely published survey indicating this fact?

Did those answering the survey understand the implications of the so called 'freedom' acquired within component holidays?

For the avoidance of doubt let us summarise what currently constitutes a package holiday.

Regulation 2 of the Package Travel Regulations defines a 'Package' as a pre-arranged combination of at least two components. If they are sold or offered for sale, they must be done so, at an all-inclusive price. When the contract is for more than 24 hours, or has overnight accommodation, it also has either, Transport; Accommodation; A 'tourist service' not 'ancillary to transport or accommodation' and it accounts for a significant proportion of the package'

Regulation 2 goes on to deal with the new issue of DIY or

component packaging, in other words booking your holiday over the internet. If you book a holiday in this way, is it still a package holiday, and will it still attract the consumer protection of the regulations?

The Regulations state:

'(i) the submission of separate accounts for different components shall not cause the arrangements to be other than a package;

(ii) the fact that a combination is arranged at the request of the consumer and in accordance with his specific instructions (whether modified or not) shall not of itself cause it to be treated as other than pre-arranged'

If the reader has any doubt that this threat to the consumer is anything other than real, then they should read the example on page 6. This holidaymaker and his family booked their holiday by the DIY method, and had a dire experience. The level of care and responsibility provided to this holidaymaker, and his family, was appalling, and displayed a lack of moral corporate courage. Is this the brave new world of deregulation and an unprotected travel consumer? Whether you are a seasoned traveller or a first timer, we repeat our earlier advice – buy a package holiday, one that is properly stated as such, obtain confirmation in writing. Ironically, after all these years, purchasing a true package holiday is currently the best way to enjoy consumer protection – that is, until the politicians or the courts resolve this perilous situation.



"The level of care and responsibility provided to this holidaymaker and his family was appalling, and displayed a lack of moral corporate courage. Is this the brave new world of deregulation and an unprotected travel consumer?"

Is It Really All God's Fault?



“It is time for the consumer to challenge this comfort zone, and bring offending operators into a new century of responsibility and rational thinking”

The Impact and brutality of Hurricanes or Tropical Storms was witnessed in Wilma, Katrina and now Alberto. The events of 2005 confirmed what many commentators had predicted - large intense storms, some claiming this to be the result of Global Warming. Every year, The National Oceanographic and Atmospheric Administration (NOAA) provide a prediction for the forthcoming Atlantic Hurricane season and 2006 is no exception. For this season they are predicting ‘an 80% chance of an above normal Hurricane season’ with a 5% chance of a below normal season. They are predicting 13 - 16 named storms; 8 - 10 Hurricanes and 4 - 6 Major Hurricanes.

Lest we forget Bali and other destinations, Dahab revealed the cruelty of man, not God, toward his fellow man. On close examination of the aftermath of the Dahab bombing, it can be seen that there are deeper threads of public disquiet. For example, the land around Dahab had been subject to disputes about land grabbing for tourist development (BBC - 25 April 2006); Egyptian Judges are in a major dispute with their Government over their independence (BBC - 15 & 25 May 2005); Egyptian Authorities have linked the attacks of Dahab and Sharm el Sheik to extremist activity from the Gaza Strip (BBC - 23 May 2006); Egyptian Authorities killed a suspected militant leader in the Northern Sinai (BBC - 9 May 2006).

These are 2 examples of the real or potential threat to holidaymakers safety. This

Organisation received many calls for assistance following the Mexican Hurricanes in 2005. Despite clear warnings of the Hurricane’s advance, holidaymakers were kept in resorts, and some were left to fend for themselves. Holidaymakers were trapped for days, often only making do with meager rations, their only hope being repatriation. Hurricane cases are often compounded by travel providers flying people out to the scenes of devastation, and in both scenarios they claim there was nothing they could do - it was an ‘Act of God’.

The repulsion of terrorist attacks will often bring universal condemnation. In the days that followed the Dahab incident, the usual calls for sympathy and solidarity are made - this is then usually followed with the ‘if you don’t support the local economy, then the terrorists have succeeded’. In her recent article in the Telegraph, Cath Urqhart condemned this approach stating that she did not want, as a tourist, to become a foot soldier in the war on terrorism. When holidaymakers affected by such events have complained, they have again been met with the ‘Act of God’ defence.

Is it right, given the information available, either with a man made or natural disaster, that holidaymakers should be exposed to unnecessary risk? Is it right that the gloss of a brochure hides information which could assist the holidaymaker to make an informed choice? Is it right that travel provider’s can continue to blame God? Is it not the case

that these events attract a ‘with notice’ label? The truth is, most holidaymakers trust the companies they travel with, and trust they will fully advise them, and properly assess risk. They do not expect to be exposed to danger or abandoned in their hour of need.

Regulation 15 (2) of the Package Travel Regulations provide the defence to a travel claim. An Organiser can avoid liability if he can show that it was the:

- A) Fault of the Consumer;
- B) Fault of a third party not connected to the contract and such faults are unforeseeable and unavoidable;
- C) Unusual and Unforeseeable circumstances beyond the control of the party, which could not have been avoided even if all due care had been exercised, or an event, even with all due care they could not foresee or forestall.

Many holidaymakers often accept the events that have ruined their holiday, simply because of the ‘deity connection’. Not surprisingly, we take the opposite view. Science and knowledge combine to create a more informed society, a society of informed choices. It is now unacceptable to hide behind the veneer of force majeure. It is time for the consumer to challenge this comfort zone, and bring offending operators into a new century of responsibility and rational thinking.

'Watch out for Further Announcements' - The Flight Delay Rules

In August 2005, Mrs X and her Family were flying from Manchester to Zante on their annual Package Holiday. They were originally scheduled to travel on one airline, but several weeks before they were due to travel, the tour operator advised of a change in airline.

Mrs X was not concerned, there was nothing to indicate that there would be any problem with the new arrangements. She therefore accepted the changes. When they arrived at the airport in the early hours of the morning, they were advised that their 7am flight would not depart on time - they were advised to 'watch out for further announcements'. They were not informed as to the reason or period of the delay and they discovered that there was no airline representation at the airport other than the airside handling agent. They also found that their tour operator did not attend to this growing problem. By mid-afternoon, the airside service agent provided a voucher for food, but no news of when the aircraft would arrive. By mid-night, Mrs X and her Family, along with other passengers, were in a heightened state of anxiety. Their feelings were not helped when a woman waiting for a relative on the incoming flight advised them that the aircraft had made an emergency landing in Milan due to a mechanical problem. The flight eventually arrived in Manchester, whereupon they were provided with a letter to present to their insurance company! Mrs X and her family were delayed by 19

hours.

Upon her return home, Mrs X discovered through the internet, that this small airline had been subject to rumours of major safety concerns, and had no registered office in the UK. Mrs X has attempted to obtain redress under 261/2004 for the loss of her rights and for compensation under the Montreal Convention. To date she has had no response from the airline, and we have advised her to write to the Air Transport Users Council and to file a report with the CAA, expressing concerns about the safety issues with this airline.

So if you are delayed, what are your rights under the new directive? The Directive states that where an airline 'reasonably expects a flight to be delayed beyond its scheduled time of departure':

- a) For 2 hours or more where the flight is for 1500 kms or less;
- b) For 3 hours or more in all intra-community flights of more than 1500 kms, and of all other flights between 1500 & 3500 kms, or
- c) For 4 hours or more in the case of flights not falling under a) or b),

A consumer who is so delayed should be offered the following rights under Article 8 - Where the delay is for at least 5 hours - reimbursement for the full cost of the ticket within 7 days (there are additional provisions where the flight is part of a greater transaction), and a return flight to the first point of departure at the 'earliest opportunity'.

Further, under Article 9:

1. Reasonable meals and refreshments (in all cases);
2. Hotel accommodation when a stay is necessary (delayed until the next day);
3. Transport between that hotel and the airport;
4. 2 telephone calls, telex, faxes or e mails (in all cases);
5. Particular attention must be paid to the needs of those with reduced mobility.

As you can see there is no right to compensation for delays. However, under Article 19 of the Montreal Convention, the carrier is 'liable for damage caused by delay' - they will not be liable if they can show that they took all reasonable measures to prevent the delay, or that it was 'impossible' for them to prevent the delay. Mrs X lost a full day of her holiday. The tour operator has said it is not their fault, the airline is citing mechanical problems. But consider this, can it be reasonable for an airline or for that matter, a tour operator to cite force majeure, when perhaps the evidence suggests that the problem is existing and continuing? Providing letters for insurance claims is all very well, but it is the consumer who eventually pays. Perhaps the insurance industry should start their own group action, supporting the consumer, against such cavalier airlines, and the tour operators who support them!



"Perhaps the insurance industry should start their own group action, supporting the consumer, against such cavalier airlines, and the tour operators who support them!"

HolidayTravelWatch Clinic™ - Case Study:



“Mr A had complained in writing when he returned to the UK, and experienced the same corporate ping-pong as he did in the resort”

Mr A organised his holiday through a well known internet provider. He was quite specific, a 2 week villa holiday for 4, in Playa del Ingles, Gran Canaria, with return flights and transfers. They arrived late at night, only to discover that the complex was locked. They managed to find a way in, and located their allocated villa. They found that the villa only had 2 beds and that it was infested with cockroaches. The following morning, they found the complex deserted, buildings and sports facilities boarded up and no one on the reception. As this was a 'DIY' holiday, he called the internet provider in the

UK. They stated that this was not their problem - they were only acting for the accommodation agent. The accommodation agent passed the buck back to the internet 'agent'. This continued for several days, after which, Mr A and his Family were moved to a complex in Masoplomas. When they arrived at this apartment block, they thought that this may be better than the villa they had just left. How wrong they were! On entering the new accommodation they were met with sewage smells and they were taken to their room situated on one of the upper floors. When they went into the

room, they discovered more sewage smells from their bathroom. Whilst they were unpacking, two workmen came into the apartment and commenced knocking a hole between their apartment, and the one adjacent to them. The workman then left their apartment, never to return! The hole remained for the duration of their holiday, with full views into the next apartment - fortunately, they did not have any neighbours! Mr A also discovered that the swimming pool was unsafe and in bad repair, and when he tried to take photographs, he was prevented by the management.

Suggested Resolution:

Mr A contacted us for help. On first examination, it appeared that this holiday was a package holiday as defined by Regulation 2 of the Package Travel Regulations 1992.

We determined that he had paid one price for the holiday, had received air transport and had pre booked accommodation. However, on closer examination, Mr A had been sent 2 invoices, by the internet organiser of this holiday. Mr A paid one price to the internet organiser through his credit card.

Did this mean that because he had organised the holiday himself, and purchased component parts, that it was not a

package holiday?

The answer to this problem lies in Regulation 2 of the Package Travel Regulations.

The Regulations state:

“the submission of separate accounts for different components shall not cause the arrangements to be other than a package”.

Mr A had complained in writing when he returned to the UK, and experienced the same corporate ping-pong as he did in the resort. He received no apology or explanation as to why he and his Family had been subjected to this dire situation. Mr A also discovered that neither company

were members of ABTA, and therefore could not use either their complaints or arbitration service.

It was our view that this was an attempt by a 'new tour operator' to usurp the existing travel laws for a new corporate ethic.

Sadly, Mr A's experience is not isolated. He and his Family allow themselves one luxury each year - that luxury is a holiday abroad. They had worked hard for 50 weeks for that precious 2 weeks. Given the lack of acceptance of liability, Mr A is now receiving initial free legal assistance, we urge others to do the same!

Safe Summers - Guest Article:

Holidays are an important feature of our lives. We spend a year saving, and months planning the event.

Sand, sea, sun and drink. Sadly for some, a recipe for disaster.

Mostly, we think only good things happen on holiday, we relax and let our guard down, we trust where perhaps we wouldn't at home.

Without even realising what's happened, suddenly you're in a strange place with a person who is intent on having sex with you, whether you want to or not.

Maybe it's the alcohol maybe it's the pill that was slipped into your drink, maybe its just that you trusted someone who seemed nice, just a little too much, but suddenly you realise your life is about to change and you no longer have any control over how.

Rape is not just a life shattering event, it is an event that you will have to live with for the rest of your life, and it doesn't stop there, your partner, parents children close friends are all affected.

Life isn't like a chapter in a book; you can't rub it out and rewrite the pages.

Have no misconceptions as to your vulnerability, whether you are male female or gay, old young, considered attractive or not, you are a potential victim.

Rape is not about sex: it is about power:

PROTECT YOURSELF (™)

Animals alone in the wild are easy prey to predators. Life is no different. If you're out for a good night make sure

you are with **P**eople you trust

If you are with someone who has had too much to drink, has taken drugs do the

Right thing look after them

If you find yourself on your own be **O**bservant think about where you are walking to whom you are talking where your group is. If you have lost one of your group, find them

Don't go out without **T**elling someone where you're going, who with, and what time you intend to be back

Just because you can, don't **E**xperiment with drink, drugs or both, it isn't clever, and it may be the catalyst for disaster

You are a child of the universe, you are important the world is your oyster, you have a responsibility to take

Care of yourself

On you way home use a reputable taxi firm recommended

by your hotel take the **T**axi registration number text it someone, let the driver know what you are doing. Don't jump into a car prowling the streets

You have to live with the results of your actions Life is like that

Only you will be judged for your actions but many maybe damaged

Underneath our skin we are just people we can all be hurt

Respect begins with self then it's easier to apply it to others

Stimulants may steal your ability to make decisions you can live by

Episodes in your life are not like chapters in a book, they can't be erased

Life after rape is likely to be devastating

Friends look out for each other even when it's easier said than done

This article is provided by the training organisation 'Educatio Ad Infinitum'.

This is a training organisation dedicated to providing training solutions for the legal, social and government services. It also provides training modules for industry on wider HR and diversity issues.

Educatio Ad Infinitum can be contacted through their website:

www.educatioadinfinitum.com

Or by calling:

07900474210

1 in 4 women have experienced rape or attempted rape.

1 in 7 women have been coerced into sex.

This figure rises to 1 in 3 among divorced and separated women.

Rape Crisis provides on how to deal with rape when you are abroad. Go to their link -

http://www.rapecrisis.org.uk/faq.html#_Toc120693260

HolidayTravelWatch commends the excellent work of Rape Crisis. Their work can be found at:

www.rapecrisis.org.uk

The next issue of 'Get'away' - Your Route to Travel Rights - will be published on 30 September 2006.

In the next edition read about:

- The couple who took a charter airline to the small claims court and won damages
- Have you been denied boarding onto an aircraft? If so read our next article in the series on your rights under 261/2004
- Has the tour operator made significant changes to your holiday contract? Read about your rights under the Package Travel Regulations
- Latest update on the threat to the Package Travel Regulations, including the result of the Court of Appeal hearing
- Plus many more features

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www.holidaytravelwatch.com

Current 'Calls to Arms':

Regular visitors to HolidayTravelWatch will be aware that we advise when we have received reports of illness, injury or other contractual problems, either within hotels, on airlines or within cruise ships. Our 'Calls to Arms' are an indication that holidaymakers are not alone, and they may, through our service, discover a range of options to try and resolve their travel dispute. Currently we are dealing with a wide range of complaints. The most serious are the complaints received of Norovirus affected cruise ships, these being: [MV Funchal](#), [Sea Princess](#), [MV Van Gogh](#), [Celebration](#) and [Black Prince](#). We have also received serious illness reports from holidaymakers who stayed at the [Hotel Pegasus Palace](#) (Turkey), [Hotel Belair](#) (Tunisia) and [The Splendours of Africa Safari](#). We are also dealing with [serious flight delay scenarios](#) with several Charter Airlines. If you, or anyone else you know, have been affected by any of these issues please call our helpline - 01217478100 - or contact us through www.holidaytravelwatch.com

On no account accept any offer to settle your claim without seeking independent advices

HolidayTravelWatch PTR Tip:

Consumers sometimes find themselves in dispute with a tour operator, after they have paid over a deposit, or the full sum for the holiday. Monies paid across in such circumstances are deemed to be monies held in trust for the consumer, until such time as the contract has been fully performed, or those monies have been repaid to him, or the money has been forfeited on cancellation. Regulation 20 (3) of the Package Travel Regulations provides that the interest earned, should be paid to the other party to the contract, following the 3 conditions as stated above. The only exception is in the event of insolvency of the Tour Operator or Organiser. It is our view that in the event of a dispute, consumers are entitled to call on the trustee to account for the monies in their care, it is after all their money. Why should a Travel Organiser benefit from their failure? Despite Regulation 20 (3) above, we consider that interest should be paid to the consumer, particularly where it can be shown that an avoidable failure in the contract occurred. We would be interested to hear from anyone who has experience of this issue.

About HolidayTravelWatch:

HolidayTravelWatch was formed from the 'Holiday from Hell' experience of our Founder, Brenda Wall. She and her Husband experienced appalling conditions and several notifiable diseases. She led the first group action under the then fledgling Package Travel Regulations, and won in an out of court settlement. She then formed HolidayTravelWatch, and 11 years later, it remains the foremost consumer travel advice organisation in the UK. HolidayTravelWatch has advised over 120,000 people and guided 40% toward resolving their own claims; the remainder have gone onto win substantial damages. HolidayTravelWatch remains at the forefront of campaigning for safer travel and improved consumer rights protection, and frequently provides advices through media sources. The services of HolidayTravelWatch remain free to the travel consumer.

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