



CAMPBELL IRVINE
INSURANCE BROKERS

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“Independent experts
in providing bespoke
insurance & risk solutions”

Tour Operators Liability

Guide to Liability Exposure and Risk management

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Introduction

Campbell Irvine have been heavily involved in the provision of insurance to tour operators and travel agents for many years.

Our service to tour operators goes far beyond simply providing quotations and collecting premiums. We are always on hand to assist in processing claims and provide advice on a whole range of insurance-related issues from takeovers, mergers and due diligence to potential claims incidents and insurance risk exposure.

Due to the pro-active role we adopt on behalf of our clients, we are in an excellent position to identify emerging risks, which could ultimately affect the financial position of our clients.

The litigious nature of our society is reflected in the ease with which your customers can claim compensation from you; even when you have apparently done nothing wrong.

We handle a large volume of claims at Campbell Irvine, both spurious and genuine. These can range from a few hundred pounds to hundreds of thousands of pounds in damages and defence costs.

The impact of a large claim, or series of small claims, might ultimately be reflected in increased liability premiums at renewal time.

We appreciate that your speciality is Travel and that ours is Insurance. As such, we are keen to provide you with as much assistance as possible with regards to claims and potential claims.

If claims are settled swiftly and amicably, this can have a positive affect on your PR and can lead to enhanced business through word of mouth. This is where we come in.

The purpose of this guide is to try to focus your mind on risk and in particular, what to do in the event of incident which could give rise to a claim. We are keen to work with you to produce a more risk friendly approach to business, which could prove to be a great benefit in your trading and potentially reduce costs.

Recognising Risk

As a tour operator, you are not just responsible for your own actions, you are also responsible at law for the actions of any supplier you use. This creates additional risk, which must be adequately managed in order to ensure that you are as protected as possible.

We have highlighted a number of areas, which we feel you are at risk from. These include, but are not limited to:

- **Negligence of your suppliers**
- **Injury, disease or illness suffered by your passengers whilst on your holiday**
- **Claims arising out of mistakes made during the holiday arrangements**
- **Loss of enjoyment / ruination of 'holidays of a lifetime**
- **Harassment claims**
- **Property loss or damage**
- **Class actions for dissatisfaction**
- **Fatalities**
- **Fidelity of staff**
- **Directors & officers liability**
- **Adverse PR or damage to reputation**

Some of these are more obvious than others, and we know that there are many more potential scenarios, which could result in a claim against you. The intention is to focus on ways in which you can correctly identify and manage the principal risks you face.

Pre-Booking Protocol

If we take a scenario where you are planning to introduce a new tour to your portfolio, we can begin to identify the areas where special care or work is required.

Firstly, let us consider what internal documentation should be obtained and retained by yourselves.

When considering a new tour you should always, wherever possible, take the time to visit the places you are intending to send people. This gives you an ideal opportunity to consider first hand, the potential risks that your passengers and employees could face.

It is preferable in some instances, to rely on third party accounts and recommendations if the person providing you with the information is entirely trustworthy and is working to your own high standards.

The fact remains that you are selling a package to individuals and groups and as such, if the whole package does not exactly measure up to the details and expectations given to the customer at the pre-booking stage, then they could have a case to bring a claim against you. This highlights the need for first hand experience.

Before anyone goes on one of your tours, we strongly recommend that you carry out a thorough risk assessment. This assessment should be documented and retained on file in a safe place, with regular checks made to ensure that it is kept up to date.

There is an increasing tendency these days for groups to request such a document before booking, particularly school parties or local councils.

The risk assessment is also a vital piece of evidence in conducting defence of claims and is often called for by both your own insurers and also third party representatives.

It is very difficult to give you a standard risk assessment document for you to tailor to your own requirements. This is because the tours offered by the travel industry are so varied in content and duration.

The best way to start, is to put yourself at the start of the trip as if you were the passenger and to go through each aspect of the tour. We can provide you with a list of headings, which you should take into consideration when compiling your assessment:

Risk Assessment Headings

- **Suitable clothing and footwear required for all elements of the trip**
- **Number of employees or guides required to provide adequate safety and assistance during the course of the trip**
- **Provision of transport – Do the companies/agents you use adhere to at least the local standards of safety? Are they insured? Are seat belts provided?**
- **Likelihood of contracting disease in certain areas**
- **Quality and security of accommodation to be used**
- **Health & safety standards at accommodation – Pay particular attention to fire safety, lighting, standards of cleanliness etc.**
- **Provision of food on the tour – Is it prepared and stored in a safe and hygienic manner?**
- **Provision of medical facilities – Always find out where the nearest facilities are at any given point on the tour and look at methods of getting pax safely and quickly to medical personnel.**
- **Provision of first-aiders – It is always desirable for your guides to possess first aid training, which can be of great help in minor incidents. Localised treatment of insect bites or sprained ankles can be of enormous benefit to the pax, especially if there is a lengthy wait for emergency transport. It also demonstrates that you have the health & safety of your passengers uppermost in mind at all times.**
- **Provision of telecommunications – Wherever possible, satellite/mobile communications should be provided to your tour leaders so that they can make swift contact with emergency services. This is also very useful if a tour leader needs to take advice from head office on issues concerning the group, such as troublesome members.**
- **Conduct of passengers in their free time – Should they be forewarned of any local customs? Might they unwittingly give offence with western dress?**
- **Likelihood of injury to passengers on the trips.**
- **Issues concerning minors on your trips – Are the guides suitably experienced and qualified to look after minors. Is security, particularly with regard to sleeping arrangements adequate?**
- **Are your suppliers all experienced in their field and where possible do they adhere to at least local health & safety standards?**
- **What other eventualities might our passengers face?**
- **Could the weather be a factor?**
- **Is sexual segregation possible, particularly with regards to sleeping arrangements.**

Risk Assessment Consideration

The easiest format to present the risk assessment is to produce a spreadsheet which identifies each individual, perceived risk and to flag it either low, medium or high hazard, with an explanation in the following column as to your reasoning.

Once the risk assessment has been completed, you should obtain full details of all the appropriate suppliers' insurance details. These should be retained on file and updated annually. These are vital documents when trying to attempt a recovery of loss on your behalf, post insurance claim.

Wherever possible, you should only use bona-fide suppliers with their own, adequate insurances. This is especially important when you are considering using local air charter companies or any form of transport provider such as coach or boat companies. We do however appreciate that in some parts of the world, this is not always possible.

In the event of a serious claim or fatality, particular scrutiny will be paid by third party solicitors to the reasoning behind your decision to use certain suppliers. In addition, solicitors may be very concerned with whether or not you made every effort to ensure that they were a safe and suitable company.

Where it is not possible to visit all hotels / guest houses / attractions you intend to use prior to travel, you should ensure that your selection criteria are fully recorded, including recommendations, photographs, health & safety documents and so on.

It is vital to demonstrate that you are as Health & Safety conscious and as concerned for passenger welfare as possible and all of the aforementioned points would be of enormous help in the event of a claim arising

Suppliers

As previously mentioned, you are ultimately responsible for the actions of your suppliers or their agents. There are many scenarios where liability could arise in this particular field. Some of the claims we have handled include the following:

- Poor local knowledge
- Rudeness / unhelpful attitude towards groups
- Sexual harassment
- Inadequate response to passenger injury or illness
- Supplier not performing as contracted
- Vehicle accidents
- Plane crashes
- Diving accidents
- Sporting accidents

The Package Travel Regulations give you a wide exposure to risk in this field. Your selection criteria for suppliers should therefore be both careful and thorough. As mentioned earlier, there is no substitute for seeing things with your own eyes and wherever possible, it is recommended that you view the suppliers' operations and personnel for yourself.

Optional Excursions

Under the Package Travel Regulations, you are technically liable only for the services you contract to provide in the tour itinerary. Optional excursions generally are outside of your control and would not normally be subject to your risk assessments. As such, they are outside of the scope of your liability exposure.

You should therefore make it very clear to your passengers that participation in any activity which has not been pre-booked and paid for through you, is done so entirely at their own risk. This includes transport to and from an event.

You should seek to confirm this in writing and also point out even if an activity is suggested by a tour leader or supplier, it is again, out side of your legal responsibility.

To this end, all tour leaders and guides employed by you should be made aware that whilst they might recommend a local activity or restaurant, they should not take any money or make any bookings on behalf of passengers. In doing so, they could potentially bring any optional activity within the realms of the Package Travel Regulations and make you liable.

When Should I Report a Claim?

It is very important to consider that failure to advise Campbell Irvine of any incident, which might later give rise to a claim, could seriously prejudice your position and leave you financially exposed.

If you are in any doubt as to whether or not a matter should be reported, please contact us to discuss, so that we can advise on the appropriate action to take.

You will be aware that we need to be advised of any potential claim incident and the obvious ones are serious injuries or major problems with bookings.

You should also pay attention to minor injuries, including slips, trips and falls. We are not saying that we are going to need a full incident report every time someone falls over, however, it would be as well to record the incident and discuss it with us, so that there is a record. We appreciate that this means extra admin work and are keen to point out that we do apply common sense to these matters and we will try to keep these matters as streamlined as possible for you.

The incident should be brought to our attention as soon as possible, so that we can assess what, if any action needs to be taken.

Please remember that passengers have up to three years before they have to launch any legal proceedings in the event of an injury or illness claim. If you have not taken the trouble to obtain appropriate reports and witness statements at the time, it is likely, a couple of years after the event, that such information which may be vital for defence purposes is simply not available and as such, you would be left with a claim against your record.

Claim & Incident Procedure

There are a number of law firms in the UK who have a reputation for aggressively pursuing claims against tour operators for all manner of incidents on behalf of aggrieved passengers. This number is sure to increase over time, as this is a rich vein of legal business.

We are concerned with your defence in such matters and where these law firms are concerned, it is vital that we can jointly put together a robust case in spurious matters and in genuine matters can swiftly provide the right information, thus helping to mitigate loss.

What information should I gather? When should I report an incident? When is an incident an incident?

All of these are very valid questions. Quite simply, we should be advised of any incident, as soon as it occurs, which could potentially give rise to a claim. This could involve minor injuries and complaints, as well as more serious matters such as serious injury.

Passengers can bring claims for injury against you up to three years after the event. If you have not prepared yourself in advance in such matters, your position could be prejudiced.

We therefore recommend that you prepare an incident pack for all of your tour leaders / representatives / suppliers. This pack would ideally contain the following:

Witness statement forms

Disposable camera or digital camera & memory stick

Tour guide incident report form

Supplier incident report form, including additional sheet for insurance information

If witness statements are filled out as soon as possible after the incident, this ensures that the information is fresh in the witnesses' minds and as such is more likely to be an accurate and fair record of events. There is always the likelihood that witnesses might not remember vital information if asked to recall matters weeks or even months after the event. It is always as well to remember that many group passengers correspond after an event by email, telephone or post and as such, if you have a pax with an axe to grind, you may find that they have had an influence over the memory of an event held by a witness. We do not mean this in a bad way, but simply that it is very easy to put a different spin on a version of events and this can have a big impact on your defence.

Claim & Incident Procedure

Photographs are really useful. For example, if we receive a letter from a solicitor outlining an injury suffered by a passenger months ago, it quite often appears to be more serious when written down on paper.

If you had provided us with a full incident report including photos, we could see for ourselves the extent of the injury and as such, this helps us to assess the potential severity of the matter.

Please ensure that the tour guides and representatives give you a full report of each event as soon as possible after it occurs. If this is left too late, you might not be able to get hold of this individual again because he or she might have left for pastures new. Quite often, the statement of these individuals proves quite pivotal in claims, particularly the spurious ones. It is very frustrating to be hindered in carrying out a successful defence where we cannot accurately counter third party arguments.

It is therefore easiest to provide pro-forma sheets in these packs, which help to facilitate quick, easy and accurate information provision.

If you receive any correspondence from a third party or their representatives, please refer to us before replying, unless the reply is to acknowledge the correspondence. Unless otherwise directed, any letter sent by you to a third party should clearly contain the phrase, 'WITHOUT PREJUDICE'.

We can advise on the most appropriate form of action to take at this stage. This might be in the form of us replying to the correspondence or us providing you with a draft response.

We are keen to keep your losses to a minimum as this has a bearing on premiums at insurance renewal. Please however note that we do appreciate that these are your customers. As such, all claims handled by us are done so sympathetically as we have no wish to give grounds for a passenger to give you (and us) bad PR.

All claims are fairly and equitably assessed and where appropriate swift and reasonable settlement is concluded.

To summarise - it is safer to advise us of all incidents as and when they occur. We can then make a judgement on the best course of action.

Useful Points to Remember

Vehicles / Accommodation

Please remember that your tour operator's liability policy will exclude any claims arising out of the operation or ownership of any accommodation or mechanically-propelled vehicle which is owned or operated by you or your employees.

If you operate your own vehicles or boats, you should contact us for more specialised passenger accident liability, property or marine cover in this regard.

Employers Liability

Where this is provided under your tour operators liability insurance, it must be borne in mind that this will only extend to include liability for personnel who are employed by you under UK contracts of employment. This section is intended to cover personnel working temporarily abroad and is not intended to provide indemnity to indigenous personnel and guides.

If you wish to provide an element of protection for such personnel, we can look into personal accident insurance, should this be of interest.

Directors & Officers Liability

It is important to remember that your tour operators liability insurance provides wide coverage for the Company and it's listed subsidiaries, should a claim be brought against it/them. There is now an increasing tendency for claims to be brought against individual directors and officers. If this happens, your tour operators liability will not provide you with any cover and as such, the individual will have to foot his or her own defence costs and meet any damages. This obviously has a direct impact on personal wealth and assets.

We can provide you with, a Directors & Officers Liability Insurance policy which helps to protect in such circumstances. Please contact us for further details.

We hope that this document proves to be of use to you. If you require any further information, please feel free to contact us and we will be happy to assist

Contact Details

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