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Sexual Assault Abroad

Claims involving sexual assault at foreign hotels or on cruise ships: liability, jurisdiction and quantum

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Roadmap: 45 minutes

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- **Part 1 (6 min):** introduction, scope and identifying the defendant
- **Part 2 (9 min):** foreign hotels and the package travel route
- **Part 3 (6 min):** excursions and add-ons
- **Part 4 (8 min):** cruise ships and the Athens Convention
- **Part 5 (5 min):** jurisdiction and applicable law after Brexit
- **Part 6 (5 min):** evidence, vulnerability and procedure
- **Parts 7 and 8 (6 min):** quantum and key takeaways

Part 1: Two scenarios, two regimes

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Foreign hotel: package holiday

Organiser liable for all travel services in the package (2018 Regulations, reg 15(2))

Compensation for damage caused by any lack of conformity (reg 16(3))

Usually an English-domiciled organiser, sued in contract

Ordinary three-year limitation period for personal injury

Cruise ship: Athens Convention

Force of law in the UK: Merchant Shipping Act 1995, s.183

Non-shipping incident: carrier liable only for proven fault or neglect (art 3(2))

Exclusive: no claim against the carrier outside the Convention (art 14)

Two-year time bar from disembarkation (art 16)

Part 1: Who is the right defendant?

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1. The perpetrator

Liable directly in assault and trespass to the person, but rarely worth suing: often abroad, unidentified or without means

2. The hotel or carrier

Vicarious liability or a direct duty; usually a foreign defendant, with foreign law and local standards in play

3. The organiser

Contractual liability for services in the package; usually English-domiciled and insured, so the realistic target

Take a trauma-informed approach from the first meeting: anonymity, special measures and expert-led evidence (CPR 39.2; PD 1A).

Practice point

Part 2: Organiser liability under the 2018 Regulations

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> *"The organiser is liable to the traveller for the performance of the travel services included in the package travel contract, irrespective of whether those services are to be performed by the organiser or by other travel service providers."*
>
> **Package Travel and Linked Travel Arrangements Regulations 2018, reg 15(2)**

The remedy

Appropriate compensation for any damage sustained as a result of any lack of conformity (reg 16(3))

The defences

Lack of conformity attributable to the traveller, to an unconnected third party (unforeseeable or unavoidable), or to unavoidable and extraordinary circumstances (reg 16(4))

X v Kuoni Travel Ltd [2021] UKSC 34

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The leading authority: rape of a guest by a hotel employee, Club Bentota, Sri Lanka

17 July 2010

Hotel electrician, on duty and in uniform, offers Mrs X a shortcut to reception

He lures her into the engineering room and rapes and assaults her

2016 to 2018

High Court: guiding a guest was not part of the holiday arrangements

Court of Appeal (2:1): appeal dismissed; Longmore LJ dissents

2019 to 2021

Reference to the CJEU (C-578/19)

18 March 2021: employee is not a supplier, but the defence for events that cannot be foreseen or forestalled is unavailable

30 July 2021

Supreme Court allows the appeal

Kuoni liable under the 1992 Regulations and for breach of contract

What Kuoni decides

> *"...the obligations arising from a package travel contract, the improper performance or non-performance of which renders the organiser liable, cannot be interpreted restrictively."*
>
> **CJEU, C-578/19, para 45, relied on in X v Kuoni [2021] UKSC 34, para 36**

- **Broad scope:** ancillary services are included, such as staff guiding a guest within the hotel
- **Employees count:** not "suppliers", but their acts are treated as the supplier's
- **No defence:** an employee's acts fall within the supplier's sphere of control
- **No vicarious liability question:** liability is contractual, not dependent on foreign law

Applying Kuoni to claims today

- **2018 Regulations:** reg 16(4) no longer contains the 1992 "could not foresee or forestall" wording
- **Staff assaults:** the strongest claims; identify the service the assailant was performing or purporting to perform
- **Other guests or strangers:** the third-party defence in reg 16(4)(b) is in play; the claim usually turns on security
- **Standard of care:** prove local standards; claims fail without them (Jennings v TUI)
- **No package:** look for a contract with the hotel brand or another English hook (Brownlie)

> *"...a simple rule whereby a tour operator is liable ... where those failures are the result of acts or omissions of employees of suppliers of services performing those obligations."*
>
> **Lord Lloyd-Jones, X v Kuoni, para 50**

Part 3: Excursions and add-ons

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1. Inclusive excursions

Booked with the package before departure: the Regulations apply in full

2. Pre-bookable add-ons

Separately priced: a linked travel arrangement if booked within 24 hours, otherwise a separate excursion contract. Booking conditions may still cover it

3. Locally booked

Bought in resort, often through the rep: liability turns on principal or agent, and any duty assumed

> *Wholly independent bookings (concierge, street vendor) leave only a claim against the local supplier, abroad and under local law.*
>
> **Saggerson on Travel Law, ch 6**

When is the operator liable for the add-on?

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Operator liable

Moore v Hotelplan [2010] EWHC 276 (QB): rep sold the skidoo trip, took cash and gave a branded receipt; operator was principal

Roach v Hotelplan: lift operator was a "supplier" under booking conditions covering the ski pack

Parker v TUI [2009] EWCA Civ 1261: reps on the toboggan run assumed responsibility in tort

Operator not liable

Derbyshire v First Choice: rep disclosed the local supplier and acted as its agent, despite taking the money

Parker v TUI: no contract for the run; TUI only an intermediary

Harrison v Jagged Globe [2012] EWCA Civ 835: staged stunts outside the itinerary; no duty for independent guides

Reconciling Parker and Harrison

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Employees and reps

Operator vicariously liable for its own reps, even for services outside the package

Reps who accompany an activity and see danger may need to intervene

Independent local suppliers

No liability for the "casual" negligence of a reputable subcontractor outside the package

Unless the operator contracted as principal (Moore)

In an assault case, ask who employed the guide or driver, who sold the trip and on whose terms. Calling itself an intermediary does not absolve an organiser (reg 30(1)).

Practice point

Part 4: Cruise ships and the Athens Convention

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> *"For the loss suffered as a result of the death of or personal injury to a passenger not caused by a shipping incident, the carrier shall be liable if the incident which caused the loss was due to the fault or neglect of the carrier. The burden of proving fault or neglect shall lie with the claimant."*
>
> **Athens Convention 2002, art 3(2) (Regulation (EC) 392/2009, Annex I)**

Assaults by crew

Fault or neglect of the carrier includes that of its servants acting within the scope of their employment (art 3(5)(b))

Limits

400,000 units of account per passenger (art 7(1)); lost for intentional or reckless acts of the carrier (art 13(1))

Athens: scope, exclusivity and time

- **Carriage:** on board, embarking and disembarking, and tenders (Lawrence v NCL), but not the quay or port installations (Jennings v TUI)
- **Exclusive:** no action against the carrier otherwise than under the Convention (art 14)
- **Package cruises:** MH v Costa Crociere (C-629/24, 2026): Athens regime and limits govern on-board injury; persuasive only

Two years

Time runs from disembarkation (art 16(1), (2)(a))

Suspension

Lex fori grounds such as minority or disability can suspend time (Warner v Scapa Flow [2018] UKSC 52)

Three-year long stop

Absolute; s.33 Limitation Act discretion is not a ground of suspension (Higham, approved in Warner)

Part 5: Jurisdiction and applicable law after Brexit

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Jurisdiction

Consumer domiciled in England may sue in England (CJJA 1982, s.15B); no permission to serve out needed

The transport exclusion does not cover travel and accommodation for an inclusive price

Otherwise, PD 6B gateways: consequential damage in England can suffice (Brownlie; Stylianou), then forum conveniens

Applicable law

Tort: Rome II art 4, usually the place of injury; the art 4(3) escape is exceptional (Stylianou)

Art 15: the applicable law governs assessment of damages, including rules of law such as a discount rate

Package contracts: Rome I art 6. Unproved foreign law is presumed the same as English law (Parker)

Part 6: Evidence, vulnerability and procedure

- **Vulnerability:** PD 1A measures can include helping a party put evidence before the court through experts (AXX v Zajac)
- **Intermediaries and special measures:** directions must be necessary, not merely helpful (CXC v Clarke)
- **Anonymity:** routinely ordered (X v Kuoni; CAX v PQR)
- **Case management:** allowances for vulnerability, but unless orders still bite (Gharaei)
- **Evidence abroad:** secure CCTV, police and ship security records early; prove local standards by expert evidence

Part 7: Quantum under the Judicial College Guidelines

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JCG 18th ed, ch 4(C): sexual and/or physical abuse. Brackets include injury to feelings

Severe

£129,920 to £197,440

Serious, prolonged abuse and severe or moderately severe, prolonged psychiatric injury

Moderately severe

£59,450 to £129,920

Serious abuse or severe, prolonged psychiatric injury, but not both

Moderate

£27,170 to £59,450

Less serious abuse, or a limited reaction with a good prognosis

Less severe

£12,850 to £27,170

Lower-level, short-lived abuse; mild or quickly resolved effects

Recent awards and holiday-specific points

- **CAX v PQR [2023] EWHC 3198 (KB):** £80,000 general plus £15,000 aggravated damages
- **TWG v Scout Association (2026):** £80,000 general plus £10,000 aggravated ("moderately severe")
- **FZO v Adams (2019):** £85,000 including aggravated damages (complex PTSD)
- **On holiday:** add loss of enjoyment (Jarvis v Swans Tours); on cruises, Athens limits apply and exclude punitive damages (art 3(5)(d))

> *"...awards in cases such as this should take account of the nature, severity and duration of the abuse itself and of its immediate effects, as well as of any long term psychiatric harm..."*
>
> **KR v Bryn Alyn Community (Holdings) Ltd [2003] QB 1441, para 112**

Part 8: Key takeaways

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For claimants

Pin down the booking: package, linked arrangement, add-on or independent

Sue the organiser where possible; Kuoni removes the vicarious liability detour

On a cruise, diarise two years from disembarkation

Plan anonymity and PD 1A measures from the outset

For defendants

Test whether the assailant was performing a contracted service

Check principal or agent status for in-resort sales

Plead and prove foreign law and local standards

Invoke Athens exclusivity, the time bar and the limits

Thank you for your attention

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