

CONSEQUENTIAL LOSS GUIDELINE - NO. 1

This Guideline has been developed and published by the Board of the TCF under clause 15.3 of the TCF Trust Deed.

Guideline for payment of TCF claims by consumers for loss where they entrust money to travel agents

Background

Where travel agents who are members of the TCF fail to account to a client who entrusts money or other valuable consideration to them for travel or travel related arrangements, the client is entitled to make a claim against the TCF for compensation.

There are two types of claim referred to in the Deed -

(1) a claim for direct pecuniary loss under clause 15.1 of the Deed arising from dealings with a licensed travel agent and TCF member. If the loss is established in accordance with the Deed, the Board must pay this claim. This claim covers the money or other valuable consideration (such as a credit card debit) actually paid by the client to the travel agent, and which is lost when the agent defaults by failing to provide the travel arrangements, or refund of the money paid.

A claimant may appeal against a Board decision not to pay a 15.1 claim.

(2) a claim under clause 15.2 of the deed, where the consumer deals with an unlicensed travel agent, or suffers other pecuniary loss (apart from a direct pecuniary loss) from dealing with a licensed travel agent and TCF member. If the loss is established in accordance with the Deed, the Board is not required to pay the claim, but may do so as a discretionary decision.

A claimant cannot appeal against a Board decision not to pay a 15.2 claim.

What is other pecuniary loss?

Other pecuniary loss is a financial loss, which a consumer suffers as a result of the failure to account, and which is additional to the loss of the money or other valuable consideration which was paid to the agent. These are ordinarily expenses incurred to complete travel arrangements already entered into. It is a loss, which can be given an actual money value, and does not cover non-financial loss, such as loss of enjoyment or disappointment due to travel arrangements not being completed.

Subject to the overall ceiling on payment of other pecuniary loss, and provided the loss is established to have been reasonably incurred for the purpose of completing travel arrangements, the Board will ordinarily reimburse the following costs incurred by a claimant additional to the amount actually paid, or the value of the consideration provided, to the travel agent.

- (1) telephone and fax charges;
- (2) increase in cost of airfares, accommodation, car hire etc due to unavailability of original package providing there is no unreasonable upgrading of travel arrangements;
- (3) increases due to exchange rate movements;

- (4) credit card charges, bank charges, and interest costs relating to the refinance of travel arrangements;
- (5) cost of meals and transfer vouchers where these were included in travel arrangements.

There may be other categories of costs, which the Board will approve, in particular circumstances.

What the Board will not pay

The Board will not pay a claim, or part of a claim, for compensation for -

- (1) disappointment, loss of enjoyment, mental distress, or stress of any kind;
- (2) business or commercial losses of any kind;
- (3) legal expenses.

Overall ceiling on payments for other pecuniary loss

The Board will impose a ceiling on the payment of the total other pecuniary loss component of a claim which limits it to 25% of the gross contract amount for travel or travel-related arrangements.

Hardship

Notwithstanding the 25% overall ceiling, the Board retains the discretion in cases of established exceptional hardship, or other special circumstances, to approve other pecuniary loss payments in excess of the ceiling.