

# Don't stand for a Fawcety holiday

MIKE MacEACHERAN outlines the legal options if your vacation has been more like an episode of the BBC sitcom than a time of sun, sand and sangria

**Y**OUR TUSCAN villa is going to be solitude itself, your holiday wardrobe will travel well in your new Louis Vuitton suitcase and your time in the sun will be one long session luxury living. Or will it? This year, British consumers will spend £36 billion on their vacations, but holiday watchdogs estimate that 1.7 million of us will return with tales of disgruntlement and woe.

Sub-standard rooms, horrible hotel food and flight delays will all contribute to the waves of dissatisfaction washing through arrivals lounges at our airports this summer. In addition, 12,000 travellers will see their luggage go AWOL and spend the first few days of their holiday wondering why they failed to pack anything vaguely useful in their hand luggage.

So if you are fresh off the plane with a temper hotter than the Spanish sun, what can you do? The hope of winning some compensation may be the only thing that got you through that week at the hotel more reminiscent of Fawcety Towers than the Ritz, but will you every see a penny?

Michelle Richards is the author of the *Greenpeace Association's* newly published *Which? guide to 450 Legal Problems Solved*. The book is full of advice on issues as diverse as what to do if your washing machine goes wrong or how to settle that dispute with your neighbour over the boundary hedge. However, the section on holidays, travel and transport will be well-thumbed by many a Scot whose holiday haven turned out to be hell on earth.

Of course, prevention is better than cure, and booking your holiday through a member of the Association of British Travel Agents (ABTA) is a good start as many complaints may be covered under its code of conduct. But in these days of bargain flights and independent travel, you may not be travelling under an ABTA umbrella - although a lawyer might still be able to seek redress.

There are some basic rules on when to get action if your holiday is not as you expected. First, act quickly, as delaying your complaint can affect your rights. Get evidence of what you were wrong with the holiday as soon as you can - and follow up any verbal complaint in writing. Keep a record of your holiday, be persistent - but be reasonable as well. One bad dinner in a fortnight at a four-star hotel does not a disaster make. When seeking monetary compensation, break the cost of your holiday down into elements - flight, accommodation,

it is impossible to quantify the cost of personal enjoyment lost and the best you might hope for in that area is a goodwill payment.

"Holidays are something we look forward to and often involve considerable outlay, so we do not want anything to spoil them" says Richards. "When your booking is accepted by the hotel, tour operator or airline, a legally binding contract is made between you and the company providing the accommodation, holiday package or transport or any other arrangements."

If your holiday has left you longing for the home and workplace which just days earlier you were desperate to escape, here is Richards's advice on how to follow-up some of the most common complaints.

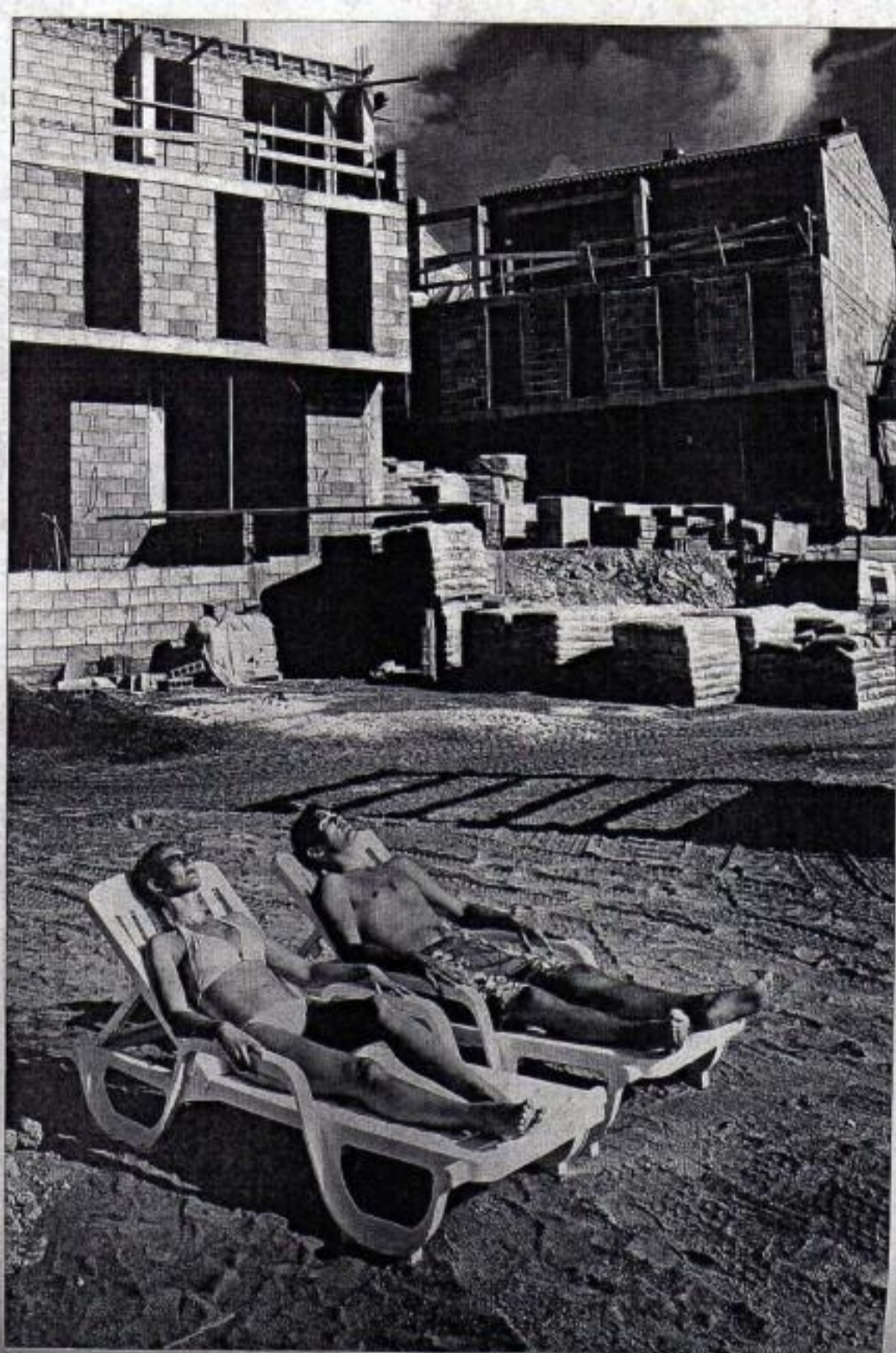
**The tour operator delivers you safely to Florida, but your case was last spotted in Cancun and arrives four days late - during which time you have spent hundreds on new clothes and cosmetics.**

Luggage disputes are now ruled by the recently introduced Montreal Convention rather than the Warsaw Convention which previously governed these issues. As long as you report the baggage missing and complete a Property Irregularity Report before leaving the airport, you should be entitled to claim against the airline for the essential items you have to buy before your luggage arrives. You'll have to ask for an interim payment, but for a delay of between 12-24 hours, an amount of up to £75 is normally acceptable. If the airline will not pay up in advance, keep the receipts for your purchases and claim a refund later.

If your case does not turn up at all, the Montreal Convention allows for you to claim a maximum of £850 for your loss - which is not that much really. In addition, you will have to produce proof of purchase for the missing items - receipts or possibly credit card statements. The old Warsaw Convention system which allowed you to claim £15 per kilogram of missing luggage no longer applies.

**Your return flight is delayed by 24 hours, during which time you spend a small fortune on food and drink. Can you claim?**

Airlines are obliged to compensate you if they fail to get you to your destination within a reasonable time of your scheduled arrival. On long-haul flights, a "reasonable" time is usually considered to be about six



Know your rights and you won't have to put up with hotel building sites or Fawcety Towers-style service. Michelle Richards

hours' control, such as bad weather, you are unlikely to be able to claim substantial compensation. A reputable airline should offer you meals during any lengthy period of delay. If you were delayed overnight, it ought to provide you with accommodation.

**Your Tuscan villa is described as "peaceful, secluded and surrounded by olive groves". However, on arrival, you find it overlooks a supermarket car park next to a motorway.**

If the advert promises quiet and isolated and your holiday turns out to be the opposite, the company you booked with is guilty of breach of contract. You should tell the tour operator's representative immediately as they may be able to move you to another villa. Also, make sure your complaint is recorded at the time. As soon as you get home, write to the tour operator setting out the ways in which the villa failed to deliver what the brochure led you to expect. If you are unhappy with the outcome, you could raise a small claims action in the sheriff court - actions here have a 75 per cent success rate for the plaintiff. However, in Scotland, the upper limit for small claims is £1,500, so, depending on how much you paid for the villa, you may not get the return you want.

You can go to a higher court if you think you deserve more

compensation from it you lose. Under the Trade Descriptions Act 1968, a tour operator that publishes a brochure which makes untrue representations is guilty of a criminal offence. This means you could also contact your local Trading Standards office. For the best advice in future, ask your travel agent to show you the description of your accommodation in a copy of the *DG&G Agents' Gazetteer*, an industry publication.

**You booked into a four-star hotel but the all-inclusive food is appalling. After a few bad dinners, you decide to eat out for the rest of the week, substantially increasing the cost of your holiday. Can you get compensation?**

This issue is covered by the European Union's Package Travel Regulations. If you have booked a package tour, the tour operator is responsible for all the services being provided -

including the hotel food. In a package tour which includes meals, there may be a specific promise about standards in the tour operator's brochure. Even if no specific promises are made, there is an implied term in your contract with the tour operator that food should be of a reasonable standard. In either case, if the food is not up to scratch, the tour operator will be in breach of contract and this is covered by Scottish law.

However, complaints about food are very subjective. You can certainly argue that the food on offer was of a sufficiently poor quality to justify your decision to eat out. Photographic evidence and sample menus may help you win the argument, but this type of case is notoriously difficult to prove.

**You chose your hotel because it overlooks a peaceful Mediterranean beach. But when you arrive, a new hotel is under construction right next door. The work starts at 5am and you can hear it through your iPod headphones. The tour company representative says these are circumstances outside his control and refuses to offer any compensation.**

The tour operator may be right. This case boils down to whether they could reasonably have known that build-

relationship with the hotels they deal with, not with the buildings next door. However, if the new complex had been under construction for some considerable time before your holiday, you could argue that the tour operator ought to have known about the proximity of the work and should have warned you at the very least. The ABTA Code of Conduct states that where an operator becomes aware of such a problem, it must tell clients of the situation and give them a chance to transfer to another hotel at the appropriate price or to cancel without penalty. If they don't, you might be able to get compensation.

If the construction site across the road kicks off the day you arrive, the tour operator might say that they had no idea about the work. However, you could argue that they should have known. Check out their local council to find out when the building permit was granted - if it was issued even a short time ago you could argue that the company should be keeping an eye on these things. The same goes for municipal road works.

If the construction is in your own hotel complex, your tour operator should really have known as they have a relationship with the hotel. You then have a good case. All of this is covered by the EU Package



Act quickly, get evidence, and keep a record