

From: Hayley Fletcher,
Director, Consumer Group

13 May 2021

Dear Sir/Madam,

Second open letter to package travel sector from the CMA

1. Coronavirus (COVID-19) has caused extraordinary pressures on the package travel sector, as well as significant difficulties and anxiety for consumers whose package holidays were cancelled as a result of the pandemic.
2. The CMA aims to make markets work well for consumers,¹ businesses and the economy generally. This includes working to ensure that consumers get a fair deal when buying goods and services and that businesses operate within the law. In the case of package travel, our approach to enforcement has taken into account the challenging financial and practical difficulties confronting the sector during the pandemic.
3. As the travel sector recovers from the pressures caused by coronavirus, our expectation is that package travel organisers ('organisers') will fully comply with UK consumer protection law, both in relation to past issues and where new issues arise. Our priority must be to ensure that consumers are protected and businesses adhere to consumer protection law, as this is key to maintaining trust in markets, which will benefit both the package holiday sector and consumers alike.
4. The CMA has previously published a general [statement](#)² and an [open letter](#)³ setting out its views on the law in relation to cancellations and refunds during the COVID-19 pandemic. This letter builds upon these documents and

¹ For the purposes of this letter, when we refer to 'consumers', this includes 'travellers' within the meaning of regulation 2(1) of [The Package Travel and Linked Travel Arrangements Regulations 2018 \(legislation.gov.uk\)](#). The definition of traveller can be wider in scope than that of 'consumer' covering, for example, anyone entitled to travel on the basis of a package travel contract.

² CMA statement on coronavirus (Covid-19), consumer contracts, cancellation and refunds, updated August 2020.

³ CMA Open letter to the package travel sector, 10 July 2020.

provides further guidance as to when refunds are due, based on the work the CMA has carried out to date in the sector. Our [case page](#) provides details of a number of enforcement cases we have brought against organisers which have failed to provide refunds, as required by the law.

Complaints to the CMA regarding package travel organisers

5. Since March 2020, the CMA has received over 23,000 complaints from consumers in relation to contracts that have been terminated as a consequence of the pandemic (by either the organiser or UK consumers).
6. The CMA's review of those complaints indicated that a number of companies had breached their refund obligations under the Package Travel and Linked Travel Arrangements Regulations 2018 (the 'PTRs').⁴ Additionally, the complaints indicated that some companies were providing inadequate or misleading information to consumers about their statutory rights under the PTRs, that refund processes were not transparent or were difficult to follow, and that there was a lack of information about the risks, and terms, associated with alternative options offered to consumers instead of a full refund.
7. Further, the complaints indicated that some companies were imposing unnecessary steps or procedural barriers which delayed or prevented consumers from getting the refunds to which they are entitled within 14 days. This is not an exhaustive list of the practices consumers have complained about, but we consider that practices of this nature are likely to breach the Consumer Protection from Unfair Trading Regulations 2008 (the 'CPRs').⁵

Action required

8. You should check that your practices and policies are in line with the requirements of consumer protection law. This might require you to consult with your legal adviser. We strongly advise you to make any necessary changes as soon as possible.

Issues raised during our investigations and the CMA's expectations

9. In addition to the consumer complaints received during our investigations, the CMA has reviewed a range of communications from various organisers to consumers. This has included information provided on websites, the

⁴ Regulation 14 of the PTRs imposes a statutory requirement in certain circumstances to provide refunds without undue delay and in any event not later than 14 days from termination.

⁵ See link here - [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](#). Only a court can decide whether a breach of the CPRs has occurred.

terms and conditions of package holiday contracts and Refund Credit Notes ('RCNs')⁶ and emails sent to consumers in relation to cancelled holidays.

Consumers' rights to a refund if a package holiday is cancelled

10. The majority of complaints that we have received concern consumers being denied their PTRs' right to a full refund without undue delay and in any event not later than 14 days from termination of their holiday contract by the organiser.

11. The complaints showed that some consumers were automatically issued with vouchers and RCNs instead of being offered the option of a full refund. Other consumers complained they were denied a full refund of their deposits or were charged cancellation fees when exercising their statutory right to terminate a package holiday contract in circumstances where they appeared to have had a right to a full refund.

12. The CMA expects organisers:

- a. To offer the consumer a right to cancel and receive a full refund within 14 days if, due to circumstances beyond its control, the organiser needs to alter significantly any of the main characteristics of the package. This refund is a statutory right under regulations 11(4), 11(5)(b) and 11(8) of the PTRs.
- b. To have robust processes in place so that when a package holiday is cancelled by the organiser under regulation 13(3), or the consumer when they are exercising their rights under regulation 12(7) of the PTRs, the consumer is provided with a full refund within 14 days. This refund is a statutory right under regulations 12(8), 13(3) and 14(3) of the PTRs.
- c. To set out clear information, in plain English, in its terms and conditions, that the consumer may cancel a package travel contract without incurring a termination fee (and is therefore entitled to a full refund) where there are 'unavoidable and extraordinary circumstances'⁷ at the relevant destination or its immediate vicinity which significantly affect the performance of the package or the

⁶ When referring to a Refund Credit Note or RCN, we mean an instrument which is covered by the financial protection scheme applicable to the original booking, for example, ABTA financial protection for cruise, rail or coach packages, or ATOL financial protection for flight package holidays (see the CAA guidance here - [ATOL Protected Covid 19 Refund Credit Notes | UK Civil Aviation Authority \(caa.co.uk\)](https://www.caa.co.uk/protected-covid-19-refund-credit-notes))

⁷ Regulation 2(1) of the PTRs states that 'unavoidable and extraordinary circumstances' means a situation (a) beyond the control of the party who seeks to rely on such a situation for the purpose of a relevant regulation and (b) the consequences of which could not have been avoided even if all reasonable measures had been taken. We consider that such situations includes the Covid-19 pandemic, which is likely to be considered a 'serious disease' within the meaning of Recital 31 of the Package Travel Directive – see <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L2302> .

carriage of the consumer to the destination. The inclusion of such a term in the terms and conditions is not necessary to give effect to a consumer's right under regulation 12(7) of the PTRs (because this right is implied by virtue of regulation 12(1)). However, we consider that it would assist both parties to have the position made clear in the terms and conditions. Where the consumer exercises this right, the organiser is required to provide a full refund within 14 days of cancellation under regulations 12(8) and 14(3) of the PTRs.

13. The CMA's also considers that, to avoid breaching the CPRs, organisers should ensure that:
- a. The option of a full refund is clearly and prominently offered to consumers in any direct communications informing them that the organiser has cancelled the package, or needs to alter significantly any of its main characteristics, or which otherwise relate to the options available to consumers in such circumstances. Direct communications include emails, messages posted to a consumer's online account and conversations with customer service advisers (including by phone and through online chat functions). The CMA would typically expect that the option of a full refund be no less prominent than any other option contained in such communications.
 - b. The option of a full refund is clearly and prominently disclosed to consumers in the information it provides to consumers on its website (and through social media) about the options available to them when the organiser cancels, or needs to alter significantly any of the main characteristics of the package. The CMA would typically expect the option of a full refund to be no less prominent than any other option contained in such information.
 - c. Processes for claiming a full refund are clear and tools for claiming a refund, such as any online refund request form or website cancellation facility, are easy to use and include clear instructions about how to cancel the holiday and claim a full refund.
14. In reviewing the complaints, we discovered that some organisers were not providing refunds to consumers unless and until they had themselves received back the payments they had made to airlines or accommodation providers. However, the fact that an organiser has not itself been refunded by third parties does not in any way relieve organisers of their duties under the PTRs. It is organisers that are legally obliged to refund consumers in these situations, irrespective of whether funds are first received back from third party service providers.

15. In the complaints, we discovered that some organisers were creating unnecessary procedural steps or barriers for consumers to obtain a full refund. For example, some organisers were making the receipt of vouchers a requirement before the consumer was able to request a full refund or, in one case, the organiser prohibited consumers from being able to use those vouchers to request a full refund before a specified date in the future. These barriers only applied where consumers were seeking a refund; they did not apply, for example, where the consumer wished to rebook a holiday with the relevant organiser.

Options provided as an alternative to a full refund

16. In circumstances where a package travel contract has been cancelled by either the organiser or the consumer, and the consumer would be entitled to a full refund under the PTRs, we recognise that the organiser may wish to offer alternatives to a cash refund. However, in accordance with the organisers' duties under the CPRs, the CMA expects organisers to make sure that the option of a full refund is always clearly and prominently offered to consumers (as set out in paragraph 13 above). No matter what options an organiser offers consumers, they remain bound to provide a full refund within 14 days. In light of that, the CMA considers that organisers should:

- a. make it clear that if consumers hold RCNs they are entitled to redeem them for full refunds at any time;
- b. pay such refunds within 14 days of a request to redeem RCNs being made;
- c. convert RCNs back to their cash value upon expiry and refund consumers the full amount owed;
- d. not mislead consumers about the risks of accepting alternative options to a full refund. For example, accepting RCNs, or booking alternative packages, may have financial implications for consumers, in particular in relation to their rights and/or obligations under section 75 of the Consumer Credit Act 1974,⁸ chargeback schemes⁹ and insurance policies.

17. For the avoidance of doubt, organisers should be aware that any contractual arrangement, or any statement by a consumer, which directly or

⁸ Under s75 of the Consumer Credit Act 1974, where a consumer has paid for a package holiday on their credit card, in certain circumstances they may have a claim for misrepresentation or breach of contract against the credit card company as well as, or instead of, a claim against the package travel organiser, see <https://www.legislation.gov.uk/ukpga/1974/39/section/75>

⁹ Chargeback is a financial redress scheme for goods and services offered by providers such as MasterCard and Visa in certain circumstances – see [Chargeback and Section 75 | UK Finance](#) and [Finalised Guidance: Cancellations and refunds: helping consumers with rights and routes to refunds \(fca.org.uk\)](#)

indirectly waives or restricts the consumer's rights under the PTRs is not binding on them and should not be used by organisers.¹⁰ Any contract terms, notices or consumer declarations seeking to do so are not effective in limiting consumers' PTRs cancellation rights, regardless of how clearly package organisers might communicate that position to them at the time of booking, and are, in the CMA's view also likely to be unfair under Part II of the Consumer Rights Act 2015. This may be of particular relevance when considering how The UK Foreign, Commonwealth and Development Office ('FCDO') advice against travel (or all but essential travel) impacts on consumers' cancellation and refund rights (see paragraphs 21-23 below).

Refund guarantee

18. We have noticed a trend where some organisers are offering consumers what are typically referred to as 'refund guarantees'. However, we are concerned that in some cases organisers are presenting consumers' statutory rights under the PTRs as forming part of the 'guarantee' offered by organisers.

19. In our view, presenting a consumer's statutory right to a refund within 14 days as part of a formal 'guarantee' offered by the organiser to consumers is likely to be a 'banned practice' and therefore contrary to consumer law. Schedule 1 to the CPRs sets out a list of commercial practices which are in all circumstances considered unfair and, as such, are 'banned practices', pursuant to regulation 3(4)(d). Paragraph 10 of Schedule 1 identifies the following banned practice: '*Presenting rights given to consumers in law as a distinctive feature of the trader's offer*'. It is worth noting these are also criminal offences.¹¹

20. In light of the above, we would expect any 'refund guarantees' set out in an organiser's communications with consumers to be confined to only those distinctive features offered by the organiser which go beyond the consumer's statutory rights. Organisers should not try to badge any aspect of consumers' refund rights provided under the PTRs as a distinct feature of their offer.

The UK Foreign, Commonwealth and Development Office ('FCDO') advice¹²

21. In general, for package holiday contracts, the CMA takes the view that the existence of FCDO advice against travel, or against all but essential travel, to

¹⁰ See regulations 30(2) and 30(3) of the PTRs.

¹¹ [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk) Schedule 1, paragraph 10.

¹² The FCDO has a longstanding practice of publishing travel advice for the benefit of UK citizens who are living or staying abroad, or who propose to travel abroad. See [About Foreign, Commonwealth & Development Office travel advice](#). The FCDO provides an objective assessment of risk, but its travel advice always puts the safety of UK nationals seeking to travel abroad first.

a particular country or region amounts to compelling evidence of extraordinary and unavoidable circumstances occurring at the holiday destination, or its immediate vicinity, which significantly affect the performance of the package or the carriage of consumers to the destination. Where the FCDO advises against all travel to an international destination, that is based on its assessment that UK travellers would face an unacceptable level of risk (typically to health or safety) by travelling to that destination. Similarly, where the FCDO advises against all but essential travel to a destination, that reflects its assessment that UK travellers would face a level of risk that it deems unacceptable for the sake of non-essential travel. The CMA considers this would include travel for the purpose of a holiday. The CMA's view is reinforced by the fact that most travel insurance policies available to UK consumers planning to holiday abroad exclude cover if the policy holder travels to a destination against FCDO advice, as the destination is deemed to be high risk.

22. Accordingly, the CMA considers that where consumers terminate their package because around their departure date there is FCDO advice against travel to their holiday destination or its immediate vicinity based on health risks and general consequences resulting from the presence of COVID-19 there, they are likely to be entitled to a full refund under regulation 12(7)-(8) of the PTRs. In particular, in the CMA's view, the mere fact that the flight is still operating, and the accommodation is open is not, in and of itself, a sufficient basis to deny a consumer a full refund. This is because the CMA considers that organisers need to take into account the consumer's reasonable expectations of the package taken as a whole when determining whether a right to a full refund has arisen, including expectations as to safety, enjoyment and freedom from anxiety.
23. We would therefore expect any package travel operator seeking to refuse consumers a full refund, notwithstanding FCDO advice against travel, to explain fully the basis upon which they disagree that the FCDO advice reflects circumstances significantly affecting the consumer's package or travel to the destination, and to provide detailed information about the evidence on which they have relied in reaching that assessment. The organiser would also need to be ready to defend their stance in a court, in the event of consumers bringing court proceedings to obtain a full refund.

Conclusion

24. If the CMA continues to receive complaints about organisers which indicate consumer law breaches, the organisers concerned may face enforcement

action against them by the CMA.¹³ Local authority Trading Standards departments and sectoral regulators, such as the Civil Aviation Authority, also have powers to take enforcement action, and individual consumers have the option of pursuing a claim against organisers in court.

Yours faithfully,

Hayley Fletcher
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CMA

¹³ See our Prioritisation Principles for the circumstances in which the CMA may decide to prioritise enforcement action against a company - [CMA Prioritisation Principles - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/publications/cma-prioritisation-principles).