

From: Gordon Ashworth  
Director – Consumer Group

7 September 2020

Dear Sir/Madam

**CMA open letter to the weddings sector**

1. The purpose of this letter is to help businesses in the weddings sector understand how the CMA considers that consumer protection law applies to the wedding contracts they have with consumers during the COVID-19 (coronavirus) pandemic. The crisis has highlighted the importance of businesses ensuring their contracts meet the requirements of the law and that they recognise consumers' rights in the current situation.

**Introduction**

2. The CMA appreciates that we are in unprecedented times resulting in significant challenges for both businesses and consumers. We understand that many wedding businesses and consumers have agreed voluntary arrangements to handle the effects on their contracts which work well for both parties. The CMA is not seeking to disrupt these arrangements provided they were fairly agreed and the business has not pressurised the consumer in any way to accept the new arrangements at the expense of their rights under the law.
3. The CMA has published [a statement which sets out its views on how the law operates in relation to contracts for wedding services which have been or will be affected](#). We are encouraging businesses in the sector to familiarise themselves with it and to take any necessary steps to ensure they comply

with consumer law. We are also encouraging consumers to read up on and understand their rights.

4. This letter, and the statement the CMA has published, does not introduce new laws or rules for wedding businesses. Rather, they explain how, in the CMA's view, the current law applies in the present circumstances. They address specific issues which have been drawn to the CMA's attention by consumers as being problematic.
5. Where businesses do not comply with consumer law, they risk action by the CMA or any other enforcer under consumer protection law, such as local authority trading standards services. Consumers may also take action themselves, through the courts if necessary, to challenge breaches of contract and terms and practices which they think are unfair.

### **Consumer law and the weddings sector**

6. On 20 March 2020, the CMA established its [COVID-19 Taskforce](#). Its purpose is to monitor market developments in the wake of the pandemic, to identify any commercial practices that adversely affect consumers, and to consider appropriate responses to help businesses comply with the law and protect consumers' rights.
7. Through this work we received reports alleging some unfair practices by a minority of businesses, including some in the weddings sector, mainly relating to the cancellation of contracts and services in the context of coronavirus lockdown restrictions. As a result, on April 30 2020 the CMA published a [statement on how, in its view, the law applies to consumer contracts, refunds and cancellations](#) and announced it would examine weddings as one of three sectors of concern. The CMA has also recently updated that statement.
8. Our investigation found the majority of wedding businesses were striving to reach fair arrangements with consumers in very challenging circumstances. In many cases, couples have reached new agreements to re-schedule their

wedding. However, we also found some points of concern, and other issues on which we think businesses and consumers would benefit from more detailed clarification. These are explained in more detail in the [weddings statement](#) we have published.

9. In summary, the issues are:

- (i) wedding businesses refusing to offer or give appropriate refunds where weddings are (or were) prevented from taking place by lockdown laws;
- (ii) uncertainty about weddings that are affected by legal restrictions and government guidance as lockdown laws are eased; and
- (iii) businesses seeking to rely on unfair contract terms.

**(i) Wedding businesses refusing to offer or issue appropriate refunds where weddings are (or were) prevented from taking place by lockdown laws**

10. In the earlier part of the pandemic the government put in place lockdown laws which required wedding venues to close and prohibited people leaving home and attending gatherings. Those laws prevented weddings taking place. Governments or local authorities may also introduce local lockdown rules at a later date that have similar effects.

11. Where lockdown laws mean (or meant) a wedding cannot go ahead on the date agreed, the contract between a wedding business and a consumer is likely to come to an end. It will be what the law describes as ‘frustrated.’

12. Where lockdown laws prevent (or prevented) a wedding from going ahead as agreed, the consumer should be offered a refund. The CMA’s view is that the starting point under the law is that this should be a full refund, and a refund would be due even where the consumer has paid what the business says are

'non-refundable' deposits.

13. Wedding businesses may be able to withhold some amounts from a refund where they have already provided some services to the consumer and incurred some costs before the wedding was prevented from taking place. Our statement sets out the sums that, in the CMA's view, a business may or may not retain. In summary, we think it may be fair for a business to retain:

- (i) a sum for services or products it has already provided to the consumer (such as bespoke goods made for them) which have an ongoing value that the consumer will continue to benefit from even after the contract has ended; and
- (ii) a limited contribution to other costs which have a sufficiently direct connection with the contract, are incurred before the wedding was prevented from taking place and have gone to waste (such costs may include the buying of food and flowers for the wedding which cannot take place).

There are, in the CMA's view, likely to be few if any sums which fall into the first category and only limited amounts falling within the second.

14. There are also costs which the CMA considers that the business should not recover by withholding sums from refunds. These include:

- (i) costs which produce ongoing, reusable benefits to the business (such as general refurbishment and maintenance costs for wedding venues), as the business will get value from these in other contracts for weddings that can go ahead;
- (ii) fixed costs of doing business (such as general staff costs (other than those identified as potentially recoverable above), general IT system costs, and other general business costs (like utility costs, bank charges and business rates)) as these are costs incurred in any event whether

or not a wedding contract was entered into;

(iii) costs which can be recovered from other sources (such as the furlough scheme or other Government support schemes); and

(iv) costs of administering a refund.

**(ii) Weddings affected by legal restrictions and government guidance**

15. As circumstances surrounding the coronavirus have changed, the government has sought to ease lockdown laws and replaced parts of them with guidance about what people and businesses should do. These changes have removed or modified some of the legal restrictions requiring business to remain closed and prohibiting individuals from leaving home and attending gatherings. Governments have also issued guidance about where and how wedding ceremonies and receptions can safely take place. The position is likely to evolve further as restrictions change in response to the coronavirus.

16. In these circumstances, wedding businesses have to assess whether and how the wedding can take place and the effect on the wedding contract. Where a key element of the contract (such as venue, catering service or the reception and entertainment) cannot safely and lawfully be provided as agreed, the more likely the contract is to be frustrated. In that case, the consumer would be due a refund as set out above.

17. The same is likely to be true if the number of guests who can safely and lawfully attend the wedding and/or reception is radically different to that agreed in the contract. The number of guests is likely to be another key part of the wedding contract and the fewer who can attend compared to the number agreed, the more likely it is that the contract is frustrated and the consumer is due a refund of the kind described.

18. However, where there is a more limited impact, for example where the

wedding can go ahead at the agreed venue, with catering and a reception mainly as agreed, for a substantial majority of the agreed number of guests, there is less likelihood that the contract is frustrated. The consumer may still be due a pro-rata price reduction for the parts of the wedding that are not provided, or provided in a different way to that agreed, but they are less likely to be due a fuller refund as set out above. This is explained further in the second part of our weddings statement.

### (iii) **Unfair Contract terms**

19. We have seen examples of wedding businesses using what, in the CMA's view, are unfair contract terms to try to deny consumers refunds. These include terms which seek to:

- (i) avoid or limit the business's liability to refund consumers where the wedding cannot go ahead (sometimes called '**force majeure**' clauses);
- (ii) allow the business to change the services it provides after the contract has been agreed (often called '**variation clauses**'); and
- (iii) impose excessive cancellation charges on consumers ('**unfair cancellation terms**').

Where wedding businesses use terms that are unfair, those terms are unenforceable. They would not have the effects the business intends, and the business cannot rely on the term at all.

20. In the CMA's view, **force majeure** clauses (or similar terms which seek to limit a wedding business' liability to refund consumers whose weddings cannot go ahead) are likely to be unfair if they seek to prevent consumers obtaining refunds as set out above.

21. **Variation clauses** are also at risk of being unfair if they have the effect of giving the business a 'blank cheque' allowing it to change important parts of the contract to suit itself. In the CMA's view, such terms are more likely to be

fair if they are limited so that they only allow the business to change what it provides in a narrow range of circumstances genuinely outside its control (such as changes in the law); give the consumer the right to advance notice of any proposed changes; and give the consumer the option of a pro-rata price reduction or (where the change is significant) to cancel the contract and get a refund.

22. Where a consumer cancels they should not face disproportionately high or extra charges for ending the contract. In practice, this means the consumer should not be liable for anything more than a proportion of the price of the wedding, based on costs which can be legitimately recovered. Terms saying no refund is available in any circumstances, or that a consumer must pay in full if they cancel, without taking into account any savings to the business for not having to provide the wedding are likely, in the CMA's view, to be **unfair cancellation terms**.

## Next Steps

23. We strongly encourage businesses to examine their contracts with wedding couples and ensure they comply with consumer law. For further information, please see our guides on [consumer protection law](#) or contact your local trading standards service. If you need to redraft your contracts in light of this letter and the statement we have published, please also refer to our [unfair contract terms guidance](#) and in particular [our guidance for businesses on how to write fair contracts](#).

Yours faithfully

Gordon Ashworth  
Director - Consumer Group