Coronavirus: holiday bookings

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14 October 2021

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Summary

On 17 March 2020, to help combat the coronavirus pandemic, the Foreign & Commonwealth Office (now the Foreign, Commonwealth & Development Office (FCDO)) issued advice against all non-essential overseas travel for British nationals. Travel overseas was effectively brought to a standstill, with hundreds of thousands of UK consumers unable to take their booked holidays. On 4 July 2020 the FCDO’s travel advice changed, with exemptions for travelling to certain countries and territories.

Within the UK itself, the first “national lockdown” meant it was impossible to deliver hospitality services. Hotels, B&Bs, holiday parks, campsites etc. were all forced to close to combat the spread of coronavirus. In a statement made to the House on 23 June 2020, the Prime Minister said that as from 4 July 2020, provided that no more than two households stay together, people were free to stay overnight in self-contained accommodation in England, including hotels and B&Bs. Campsites and caravan parks could also reopen from 4 July 2020, provided all shared facilities were kept clean. This advice changed on 5 November 2020, when the Prime Minister announced tougher national restrictions in England.

With the emergence of a new, more transmissible variant of the virus and increase pressure on the NHS, it was announced on 4 January 2021 that England would enter another national lockdown. However, on 22 February 2021, the Prime Minister set out a roadmap to cautiously ease lockdown restrictions in England, the final step being taken on 19 July 2021 when all legal limits on social contact were removed. The devolved administrations in Scotland, Wales and Northern Ireland took similar steps.

People can now travel freely between England, Scotland and Wales and Northern Ireland. Travel advice on the FCDO website currently states: “to understand the risks in a country, including the latest Covid restrictions (including for entry), follow FCDO Travel Advice. To prevent new COVID variants from entering the UK, you should not travel to red list countries.”

Since March 2020, many constituents have contacted their MP about cancelled overseas and domestic holidays. Understandably, they want to recoup the cost of cancelled flights, holidays, and other bookings (e.g., car hire). For some, particularly those adjusting to a reduced income in the immediate term due to the economic effects of the pandemic, reimbursement may be urgent. Their consumer rights would depend on the type of holiday booked (e.g., whether flight tickets only, an overseas package holiday or a UK based holiday) and the contractual terms and conditions agreed.

Various organisations provide useful online information to consumers about how best to manage and, if possible, recover the costs of, cancelled travel
and holiday plans. In particular, the CAA (Civil Aviation Authority), ABTA (the Association of British Travel Agents), ABI (Association of British Insurers), Citizens Advice and GOV.UK websites. Detailed information about travel within the EU is also available on the Europa website.

The focus of this briefing is on the consumer perspective. However, ABTA has highlighted the fact that over 25,000 individuals and businesses have also contacted their MP asking for support to deal with the economic impact of the pandemic on the travel sector.

This research briefing provides an overview of what consumers can expect when their travel or holiday booking has been cancelled, and their legal rights.
1 Cancelled flights

1.1 EC and CAA guidance

Following FCDO advice, all airlines in the UK operated substantially reduced schedules after 24 March 2020. Most airlines grounded the majority of their aircraft. We are starting to see some routes and services opening to passengers, particularly after the Government set out a list of countries where it is safe to travel to and from and would not require a traveller to quarantine themselves on arrival in the UK. Since 15 June 2020, it has been a legal requirement to wear a face covering on a plane when flying from the UK. \(^1\)

On 18 March 2020 the European Commission published guidance \(^2\) on the application of Regulation EC261/2004 during the Covid-19 outbreak. These are the rules that apply when your flight is cancelled and delayed. It sets out your rights, including any compensation you might be entitled to. The Civil Aviation Authority (CAA), the UK’s national enforcement body, updated its own guidance \(^3\) to reflect the Commission’s view.

It is important to note that in addition to the application of Regulation EC261/2004, airlines operating in the UK must also comply with a range of consumer law, some of which applies specifically to aviation and some which applies generally to all businesses. This includes legislation relating to price transparency, \(^4\) passenger rights during flight disruption, \(^5\) unfair contract terms and requirements to trade fairly. \(^6\)

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1 Guidance on the application of Regulation EC261/2004 in the context of the developing situation with Covid-19, CAA (Civil Aviation Authority)


3 Guidance on the application of Regulation EC261/2004 in the context of the developing situation with Covid-19, CAA (Civil Aviation Authority)

4 The CAA and the Competition and Markets Authority are responsible for compliance and enforcement with laws which apply to the sale and advertising of flights and holidays. These include the Consumer Rights Act 2015, the Consumer Protection from Unfair Trading Regulations 2008, and the Electronic Commerce (EC Directive) Regulations 2002.

5 The CAA is responsible for compliance and enforcement with the European law which provides passenger rights when flights are delayed, cancelled, or overbooked

6 Airlines must comply with the law that prohibits the use of unfair contract terms, as set out in the Consumer Rights Act 2015. Unfair terms are not enforceable against the consumer, ultimately, the court will decide whether a term is unfair. A contract term may be considered unfair if it creates a significant imbalance in the rights and obligations of the airline and consumer to the detriment of the consumer. The CAA has the power to take enforcement action.
1.2 Cancelled flight-only bookings

There are two relevant elements of EU Regulation 261/2004 (referred to as “E261”) to consider: the first concerns cash refunds and the second is a compensation element.

Cash refunds

If a flight has been cancelled, then the consumer is protected by E261, enforced in the UK by the CAA. Passengers must be offered the choice of:

- a full cash refund within 7 days; or
- re-routing (alternative flights) either at the “earliest opportunity” or a later date to suit the passenger.

Given the global nature of the pandemic, re-routing may not be a practical option. The passenger’s claim for a cash refund should be made directly to the airline or through the travel company that booked the flights (and with whom the consumer has a contract).

According to the CAA’s own guidance on the application of E261 during the Covid-19 outbreak, it is open to airlines to offer incentives to passengers to encourage them to fly at a later date. The relevant extract is reproduced below:

> It is important that airlines assist passengers by clearly setting out these options to them. In addition, it is open to airlines to offer incentives to passengers to encourage them to fly at a later date, for example through providing vouchers of a higher value. We recognise that in the current operating environment there may be significant practical difficulties in airlines providing alternative flights, for example, where government advice is to avoid travel to particular destinations. A refund for the passenger may therefore be the only practical option available.⁷

However, the CAA is aware that some airlines are offering vouchers in place of cash refunds. If the ticket was booked with an EU carrier or with an airline flying from an EU airport, the CAA gives the following consumer advice:

> If your flight has been cancelled, you are entitled to a refund, so if you would rather the financial payment, please request this from your travel provider.

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⁷ “Guidance on the application of Regulation EC261/2004 in the context of the developing situation with Covid-19”, CAA (Civil Aviation Authority)

⁸ Ibid
If you believe you are entitled to receive a refund from your airline, but they are refusing, you may wish to open a complaint with the airline.\(^9\)

It is important to note that flight-only bookings are not ATOL protected, so if a consumer accepts a voucher and the airline later becomes insolvent, the consumer will not be refunded.\(^{10}\)

There is advice available on the Internet on how to contact airlines like BA, easyJet and Ryanair for a refund. Some companies that would previously only issue vouchers or made it difficult to obtain cash refunds have since reinstated online automatic refund options.\(^{11}\)

There is differing practice across the world as regards the use of vouchers or credits rather than cash refunds and if for example you are travelling with an airline registered in the Far East, Middle East, or North America you may wish to look at the rules as set out by their respective aviation authorities.\(^{12}\)

On 13 June 2020 the Transport Select Committee published a report on the impact of the pandemic on the aviation sector. It reported research from the consumer group “Which? that in late April, twenty of the UK’s biggest airlines and package holiday providers were not meeting their legal obligations to provide refunds to customers within the statutory timeframes. There was further evidence that as of 28 May 2020, only 5% of Ryanair passengers had received a refund within seven days and only 16% overall had been refunded; the equivalent figures for easyJet were 14% and 37%. British Airways told the Committee that by 13 May it had provided cash refunds on 921,000 tickets, while 47,400 refunds were still being processed.\(^{13}\)

The Committee concluded that many airlines had “failed to refund customers for … flights in a timely manner, in accordance with their legal obligations”, but they were “faced with an unprecedented crisis in which they have been asked to refund billions of pounds worth of fares in a short period while also covering their extensive costs of operation”\(^{14}\). It recommended that the Government consult on whether it should legislate to introduce protections

\(^9\) Civil Aviation Authority, [COVID-19: Information for passengers, holidaymakers and the industry – compensation](https://www.caa.co.uk/coronavirus), undated

\(^{10}\) ATOL (Air Travel Organiser’s Licence) is a UK government-run financial protection scheme operated by the Civil Aviation Authority (CAA). Under this scheme, the Air Travel Trust manages the Trust Fund for the benefit of consumers of failed tour operators.

\(^{11}\) E.g. [Easyjet, Ryanair and BA refunds: how to get your money back for cancelled trips](https://www.independent.co.uk/travel/tips/travel-tips/easyjet-ryanair-ba-refunds-how-to-get-money-back-trips-cancelled-a8666630.html), The Independent, 6 April 2020; and see Simon Calder’s Twitter for the recent change in easyJet’s policy: [https://twitter.com/SimonCalder/status/1251114908810457089](https://twitter.com/SimonCalder/status/1251114908810457089)

\(^{12}\) For example, Canada, the UAE and the USA: [Coronavirus: UK airlines plead for a refund holiday as cancellations mount](https://www.independent.co.uk/travel/tips/travel-tips/coronavirus-uk-airlines-plead-refund-holiday-cancellations-mount-a9728032.html), The Independent, 27 March 2020

\(^{13}\) Transport Committee, [The impact of the coronavirus pandemic on the aviation sector](https://publications.parliament.uk/pa/cm201920/cmselect/cmtraffic/793/793.pdf), 13 June 2020, para 86

\(^{14}\) Ibid., para 91
for airline passengers in the event of pandemic or other extraordinary circumstances.  

**Compensation**

It is important to note that consumers will not be entitled to any compensation for cancelled flights under EU261 rules, as Covid-19 is considered an “extraordinary” circumstance. The CAA has explained the position as follows:

Under EC261, consumers can receive compensation for cancellations made within 14 days of your booking date. However, this regulation does not apply where the cancellation is an ‘extraordinary circumstance’, outside of your airline’s control.

Where the Government is advising against travel to a destination, we consider that this would be viewed as an ‘extraordinary circumstance’ and compensation would not be payable. Cancellations related to coronavirus in other circumstances (e.g. where there is no advice against travel) would need to be considered on their merits and facts. However, decisions by authorities to close airspace, restrict airline operations or place restrictions on passengers are likely to be an extraordinary circumstance. Cancellations due to the economic and environmental consequences of operating flights with only a few passengers on-board may also be considered to be an extraordinary circumstance.

Please note that if your flight is cancelled, you will always be due a refund and to be provided with assistance, even if you are not due further compensation. 

You can read more about the EU compensation rules in Library research briefing, *Air passenger rights, compensation & complaints*, (CB 8576). Information is also available from the CAA website.

### 1.3 Rights if flights have not yet been cancelled

Consumers with future departure dates will need to wait to find out whether the advice from the FCDO changes and their flights can continue as planned. The consumer’s possible options are as follows:

- The consumer can wait to see if the airline cancels the flight, if it does, he or she will receive a refund.

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15 Ibid., para 92
16 Ibid
• If the flight is not cancelled but the consumer no longer wishes to fly on that date and cancels their booking early, there is no automatic right to a cash refund. Indeed, the consumer may have to pay a cancellation charge.

• To pre-emptively seek to reschedule the flight for later in the year (before the flight has formally been cancelled) may result in the consumer being asked to pay a re-booking fee (much would depend on the airline and the type of ticket bought). That said, some airlines have decided to temporarily waive this fee.

According to Which?, some airlines are now allowing consumers with existing bookings to change their travel plans without incurring a re-booking fee or are offering credit vouchers/notes. It is important to note that credit notes for future travel, though offered in good faith, may become worthless should the airline enter insolvency before the holiday has been taken.

For those consumers wishing to purchase flights today for dates later in the year, some travel companies are choosing to offer more flexible booking policies due to consumer concerns over coronavirus. Consumers should check the contractual terms of their travel provider.

1.4 CMA investigation

In December 2020, the Competition and Markets Authority (CMA) launched an investigation into airlines and refund practices during the pandemic. The press release explains the scope of the CMA investigation:

...situations where airlines continued to operate flights despite people being unable lawfully to travel for non-essential purposes in the UK or abroad, for example during the second lockdown in England in November.

The CMA is aware that, in some cases where flights were not cancelled, customers were not offered refunds even though they could not lawfully travel. Instead, many were offered the option to rebook or to receive a voucher. ¹⁷

On 9 June 2021, the CMA announced that it is investigating whether British Airways and Ryanair have broken consumer law by failing to offer refunds for flights consumers could not lawfully take because of Covid-19 lockdown

¹⁷ Competition and Markets Authority (CMA), COVID-19: CMA launches investigation into airlines over refunds, 16 December 2020
restrictions. The CMA has written to both airlines outlining its concerns. An extract from this announcement is reproduced below:

During periods of lockdown across the UK, British Airways and Ryanair refused to give refunds to people that were lawfully unable to fly, with British Airways offering vouchers or rebooking and Ryanair providing the option to rebook.

The CMA is concerned that, by failing to offer people their money back, both firms may have breached consumer law and left people unfairly out of pocket. It is now seeking refunds, or other redress, for affected customers.

On 7 October the CMA announced that it was closing this investigation into Ryanair and British Airways. While it recognised that people who had been legally prevented from taking flights due to lockdown laws should be offered a full refund, it concluded that current legislation does not provide passengers with a sufficiently clear right to a refund in such unusual circumstances, and the potential costs of pursuing this case in the courts did not justify continuing with it. In a statement, Andrea Coscelli, Chief Executive of the CMA, said:

We strongly believe people who are legally prevented from taking flights due to lockdown laws should be offered a full refund and we launched this investigation in the hope that we would be able to secure a positive outcome for consumers. However, after considering the relevant law and gathering evidence in our investigation, we have concluded that the length of time that would be required to take this case through the courts, and the uncertain outcome, can no longer justify the further expense of public money.

Given the importance of this to many passengers who have unfairly lost out, we hope that the law in this area will be clarified.

Both the above cases form part of the CMA’s ongoing work in relation to holiday refunds during the Covid-19 pandemic (see below to section 3 of this paper).

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18 Competition and Markets Authority (CMA) press release, CMA launches action against British Airways and Ryanair over refunds, 9 June 2021
19 Ibid
Cancelled booking for overseas holiday accommodation

The advent of discount hotel booking sites and flexible accommodation, like Airbnb, means that many people opt not to buy a package holiday but to book flights and overseas accommodation separately.

If FCDO advice means that flights to certain destinations cannot leave the UK, any refund on the cost of the accommodation would largely depend on the contractual terms and conditions agreed at the time of the booking or any “extenuating circumstances policy” subsequently introduced. For example, during the first national lockdown, Airbnb stated on its website that reservations for stays and “Airbnb Experiences” made on or before 14 March 2020, with a check-in date between 14 March 2020 and 31 August 2020, were covered by its extenuating circumstances policy. To cancel under the policy, and receive a refund or credit note, consumers were required to attest to the facts of and/or provide supporting documentation for their extenuating circumstances.

If a consumer simply decides they no longer wish to travel, their position will depend on what contractual terms were agreed in respect of a cancellation. In general, consumers are unlikely to have a contractual right to cancel their accommodation without incurring some sort of penalty. A travel insurer is also unlikely to cover any cancellation charges simply because the policyholder has changed their mind (see below).

The situation would be different if it is the accommodation provider who cancels the booking. In this case, the consumer is in a much better position to claim a cash refund or, if desired, alternative accommodation dates. If no reimbursement is forthcoming, the UK consumer may be able to make a claim against their existing travel insurance. Alternatively, they could consider making a section 75 claim under the Consumer Credit Act 1974 (CCA 1974).

Under section 75 of the CCA 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the retailer or trader. This means it is just as responsible for the goods or services supplied, allowing the consumer to also put their claim to the credit card company (although he/she cannot recover their losses from both). To make a section 75 claim, the holiday booking must have cost over £100 and not more than £30,000. Crucially, section 75 applies to overseas transactions.

If a debit card was used to make the holiday booking, it is possible that the consumer may be able to use “chargeback” to get some (or all) of their money back. Chargeback is a transactional reversal made to dispute a card transaction and secure a refund for the purchase. It works by the bank
withdrawing funds that were previously deposited into the recipient’s (i.e., trader’s) bank account and putting them back into the customer’s account. Of course, the recipient (i.e., the trader) may dispute a chargeback with the bank if it can prove the chargeback is invalid. Unlike section 75 of the CCA 1974, chargeback is not enshrined in law but is part of “Scheme Rules”, which participating banks subscribe to.
3 Cancelled package holiday booking

3.1 EU law

The Package Travel Directive (2015/2302/EU) is the legal framework on which the UK Package Travel Regulations were based. Although the UK has now left the EU, under the Withdrawal Agreement a transition period was imposed until 31 December 2020. Up to that date, EU law in its entirety applied to and in the UK.

The Package Travel Directive protects travellers’ rights when booking package holidays, for example in terms of cancellation, liability, repatriation, and refunds. EU rules cover pre-arranged package holidays, but also self-customised packages, where the traveller chooses different elements from a single point of sale online or offline. In addition, these rules provide certain protection for linked travel arrangements, which is when for example the traveller books a flight on a website and is then invited to book a hotel on a different website. The Directive applies to both European and foreign traders selling travel packages to European travellers, be it directly or via a retailer. Importantly, under the Directive, package organisers must take out insolvency protection and guarantees which cover refunds and repatriation in case of bankruptcy. Detailed information about the Directive is available from the Europa website.

On 19 March 2020, the European Commission updated its guidance about refunds for cancelled package holidays due to the coronavirus crisis, encouraging consumers to accept vouchers or credit notes, as long as the consumer is allowed to ask for a refund eventually. The voucher must also be backed by insolvency protection to protect the consumer should the tour operator fail. An extract from this guidance note is reproduced below:

Having regard to the strains on liquidity of tour operators because of missing new bookings coupled with reimbursement claims, travellers should consider accepting that their package tour is postponed to a later point in time. Having regard to the current uncertainty to make travel plans, that could be done by means of a credit note (so-called “voucher”). However, the traveller should have the possibility to ask for a full refund if, eventually, he or she does not make use of the voucher. Moreover, it should be ensured that the voucher is covered.

by appropriate insolvency protection. In any case, before cancelling, we suggest that you contact your tour operator or travel agency.  

However, this guidance note is not legally binding. It simply gave the European Commission’s view that Member States should find “flexible solutions” to demands for refunds on cancelled holidays during the pandemic. On 20 March 2020, ABTA published a statement on the European Commission’s guidance, an extract is reproduced below:

[The guidance] encourages customers to accept credit notes, as long as the customer is allowed to ask for a full refund, eventually, if he or she does not make use of the credit note towards a new booking. Crucially the Commission states that the credit note should be covered by appropriate insolvency protection. This is an extremely positive step and shows that the Commission recognises the strains being placed on tour operators due to Coronavirus.

ABTA has also produced a briefing document outlining the temporary regulatory measures introduced by individual EU Member States.

3.2 UK law: Package Travel Regulations - right to a refund

UK consumers who have paid for a package holiday (which include flights and accommodation and perhaps some other element such as car hire) are protected by the Package Travel and Linked Travel Arrangements Regulations 2018 (known as the “Package Travel Regulations”). Whether a holiday is covered by the Regulations will depend on what and how the holiday was booked. If in doubt, the consumer should check with their travel company.

As a rough guide, a holiday is probably a package if:

- it was advertised as a package or all-inclusive offer,
- it was bought for an inclusive or total price,
- the consumer bought more than one part of their holiday (such as flights and accommodation) from one company with one payment,
- after booking one part of the holiday, the consumer was prompted to buy another (such as car rental) and their personal and payment details

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22 ABTA statement following updated Package Travel Directive (PTD) guidance, ABTA, 20 March 2020
23 EU Member State changes to Package Travel Regulations, ABTA, 24 April 2020. Also see ABTA’s Coronavirus advice for customer, FAQs section on what is the UK Government’s position?
24 The Regulations derive from the EU Package Travel Directive
were simply transferred, and this was completed within 24 hours of the first booking.

In effect, a package holiday is a “ready-made” holiday, usually where the consumer books through one company and pays one price. However, holidays sold in other ways might also be classed as a package holiday. For example, some “shopping basket” type online sales, where the consumer selects the different elements of the holiday (such as flights and accommodation), might also be classed as a package holiday. UK consumers purchasing package holidays are either ABTA or ATOL protected.

Package holidays have the benefit of financial protection, this means the consumer may be entitled to a refund (or repatriation if necessary) should the travel operator become insolvent. Importantly, under the Regulations, if any element of the package holiday is cancelled or significantly changed, then the consumer has the right to request a full cash refund of any payments made towards the holiday. The refund must be made within 14 days of the cancellation being known.

The Regulations also allow a consumer to cancel without penalty where unavoidable and “extraordinary” circumstances at the place of destination or its immediate vicinity significantly affect the performance of the package (e.g., industrial action, “act of god” etc.). In such circumstances, the consumer is entitled to a full refund within 14 days from the package organiser but no additional compensation. Further detailed information about the Regulations is available from both the ABTA and Which? websites.

3.3 RCNs & temporary changes to the Package Travel Regulations

Coronavirus - unprecedented circumstances

International travel was brought to a standstill by government measures to contain the spread of Covid-19 and led to the cancellation of hundreds of thousands of package holidays. Under the Package Travel Regulations, travel companies must refund consumers within 14 days of their holiday being cancelled. However, according to ABTA, it was impossible for many travel agents and tour operators to provide immediate cash refunds:

These businesses have not yet received the money back from airlines and hotels around the world that have temporarily closed. With other EU countries adopting their own laws, many of these suppliers are now also referring to changes in their own regulatory regime as a
reason not to refund UK companies. Unless a solution is found, insolvency will be the only option for many UK travel companies.\footnote{COVID-19: the challenge facing the UK travel industry, ABTA, 4 May 2020}

At the same time as dealing with consumer demands for cash refunds, travel agents also faced the prospect of chargeback of credit card payments.\footnote{Ibid} In launching its “Save Future Travel” campaign, ABTA said that the protections provided in the Package Travel Regulations were never designed to cope with the demands currently being placed on businesses by the extraordinary circumstances of the pandemic.\footnote{An estimated two million overseas package holidays were due to depart in the first 30 days of the UK government’s warning against non-essential travel, running from 17 March to 16 April 2020. The have all been cancelled, representing around £1 bn to be refunded to consumers under the Package Travel Regulations (see Package Holiday Refund Rules to be suspended, Independent, 23 March 2020)}

On 16 March 2020, ABTA wrote a letter to the Prime Minister calling for immediate temporary changes to the Package Travel Regulations (with or without EU level action). It also asked for urgent financial support to help businesses through the crisis. Without this action, ABTA warned that viable and normally successful UK travel businesses were at risk of insolvency.\footnote{ABTA calls for urgent support for the industry from Government, ABTA, 16 March 2020}

According to ABTA, the total figure for employment across all outbound, inbound, and domestic hospitality, tourism and travel businesses was an estimated 3.3 million.\footnote{ABTA warns time is running out for UK travel business, ABTA, 20 March 2020}

In its document, COVID-19 the challenge facing the UK travel industry (published in May 2020), ABTA summarised the position as follows:

The global shutdown of travel has resulted in a severe liquidity crisis for UK travel businesses, with suppliers, such as airlines, holding on to customer money and preventing travel companies from providing refunds. The industry is proposing temporary amendments to the UK Package Travel Regulations to approve Refund Credit Notices, which could be exchanged for alternative holiday arrangements or a full refund later. Crucially full financial protection would be retained, and no consumer money would be at risk. The alternative is mass insolvencies of tour operators and travel agents. This would mean hundreds of thousands of travel workers at risk of losing their jobs, customers facing longer delays before receiving refunds, and the UK taxpayer being saddled with a bill of up to £4.5bn.\footnote{COVID-19: the challenge facing the UK travel industry, ABTA, 4 May 2020}
ABTA also expressed concern that any resolution of the airline refund situation, being debated at EU level, must not result in liabilities for unpaid flight refunds being shifted to tour operators.  

**Refund Credit Notes (RCNs)**

In March 2020, ABTA developed framework guidance for its members setting out a scheme of financially protected Refund Credit Notes (RCNs), the aim being to create a longer window for repaying refunds whilst preserving fundamental consumer rights and protections. ABTA argued that without these temporary amendments to the Package Travel Regulations, financial protection mechanisms were at risk:

> Allowing Refund Credit Notes, as a short-term alternative to cash refunds, will provide businesses with vital breathing space whilst ensuring all consumer protections are carried forward. While this will involve a delay for consumers in receiving their money, or booking a replacement holiday arrangement, the alternative is mass travel company failures and people losing their jobs. Without action, the collapse of travel businesses will mean customers waiting longer to receive their money, and a far worse financial outcome for the Government, which acts as the financial guarantor of the UK’s holiday-based financial protection scheme (ATOL and BEIS Approved Bodies).

In calling on the Government to approve its scheme, ABTA argued that a temporary relaxation of the Package Travel Regulations would not, and should not, remove the consumer’s eventual right to a cash refund should that be their preference:

> The primary rationale for any regulatory window is that it must enable sufficient time for financial recovery across the travel supply chain, which is difficult to predict with precision at this point when we do not yet know when Foreign and Commonwealth Office travel advice will be lifted or on what trajectory the industry will recover. That bridging window gives time for companies to receive refunds from airlines and hotels, stabilise, re-finance and then deliver refunds or new bookings for 2021.

UK consumers purchasing package holidays are either ABTA or ATOL protected in the event of the insolvency of the tour operator. Regarding RCNs, ABTA confirmed that its financial protection would remain in place. The 

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31 COVD-19: the challenge facing the UK travel industry, ABTA, 4 May 2020. See also “Coronavirus advice for customers – why is my refund being delayed?”, ABTA, 16 April 2020
32 ABTA statement following updated Package Travel Directive (PTD) guidance, ABTA, 20 March 2020
33 COVD-19: the challenge facing the UK travel industry, ABTA, 4 May 2020
34 Ibid
36 Ibid

Commons Library Research Briefing, 14 October 2021
ATOL scheme is managed by the Civil Aviation Authority (CAA) and underpinned by the Government.

On 18 July 2020, the Government announced it would protect RCNs issued between 10 March and 30 September 2020 for ATOL-protected bookings. Passengers who choose RCNs would be financially protected even if their travel provider collapses. However, the RCN must be used to book another holiday or exchanged for cash before 30 September 2021, otherwise it would not be protected.

The Government’s intervention was designed to boost consumer trust in the aviation and travel sector. For the travel sector, the hope was that RCNs would give companies a breathing space while safeguarding consumers’ money.

In January 2021, ABTA announced an extension to its RCN regime, recognising the continuing impact of Covid-19 on the travel sector. For consumers, the position was as follows:

- Already issued ABTA-backed RCNs would be valid until the expiry date shown on them, which could be no later than 31 March 2021.
- New RCNs would be valid up to and including 30 September 2021 at the latest. (The deadline for issuing these RCNs was 31 March 2021).

On 26 March 2021, the CAA announced that following continued disruption to the travel industry, including lockdown restrictions and the suspension of travel corridors, the Air Travel Trust (ATT) had decided to provide a short-term extension to issuing ATOL protected RCNs, up to 30 April 2021. The expiry date for ATOL protected RCNs was the 30 September 2021.

Commenting at the time, ABTA said that RCNs work because consumers are prepared to accept them as an alternative to an immediate refund and have confidence they will not “lose out” in the long run. Maintaining the financial protection which backs RCNs is critical to keeping consumer confidence in them.

However, consumers could not (and cannot) be forced to accept an RCN. Which? (the consumer body) has explained the legal position as follows:

RCNs can’t be forced on holidaymakers. Under the terms of the Package Travel Regulations 2018, you still have the right to a cash refund within 14 days of cancellation and credit notes shouldn’t be automatically sent to customers requesting cash as a strategy to delay payments. The CAA says customers are “entitled to a cash

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36 Department for Transport, Boost to passengers as government bolsters ATOL scheme – More protection for passengers following government move to protect refund credit notes, 18 July 2020
37 Refund Credit Note Extension, ABTA magazine, 26 January 2021
38 Ibid
3.4 CMA intervention in package travel sector

On 13 May 2021, the CMA published an open letter to the package travel sector reminding firms of their legal obligations and the need to ensure refunds options are clear and accessible. A copy of this letter was also sent directly to the 100 package travel companies that the CMA have received the most complaints about. In this open letter, the CMA set out its position:

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.

The CMA had previously published a general statement and an open letter setting out its views on the law in relation to cancellations and refunds during the COVID-19 pandemic. This second letter provides further guidance as to when refunds are due based on the work the CMA has carried out to date in the sector. The CMA case page provides details of a number of enforcement cases it has brought against organisers which have failed to provide refunds, as required by the law.

The CMA estimates that since March 2020, it 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). The CMA’s review of those complaints indicated that a number of companies had breached their refund obligations under the Package Travel Regulations. The CMA said:

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39 See Which? (consumer body), Government confirms financial protection for package holiday ‘refund credit notes’ After months of pressure from Which?, the Transport Secretary finally promises customers will be refunded if a firm collapses, 18 July 2020
40 Second open letter to package travel sector from the CMA, 13 May 2021
41 Ibid
42 CMA statement on coronavirus (Covid-19), consumer contracts, cancellation and refunds, updated August 2020
43 CMA Open letter to the package travel sector, 10 July 2020
44 Covid-19 cancellations: package holidays – The CMA is investigating suspected breaches of consumer protection law in the package holiday sector, 10 July 2020 (last updated 16 September 2021)
45 Second open letter to package travel sector from the CMA, 13 May 2021
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. 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’).  

In reviewing the complaints, The CMA said 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. In the CMA’s view, “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”.  

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, the CMA said it recognises that the organiser may wish to offer alternatives to a cash refund (such as an RCN), but it expects organisers to make sure that the option of a full refund is always clearly and prominently offered to consumers. It states: “No matter what options an organiser offers consumers, they remain bound to provide a full refund within 14 days”. The open letter concludes with the CMA stating that if there is evidence of consumer law breaches, the CMA may initiate enforcement action against the organisers concerned.

46 Under the Consumer Protection from Unfair Trading Regulations 2008, only a court can decide whether a breach of the CPRs has occurred

47 Second open letter to package travel sector from the CMA, 13 May 2021

48 Ibid
4 Cancelled booking for holiday accommodation in the UK

4.1 Contract terms

Domestic holidays involving accommodation only are not usually covered by the Package Travel Regulations. Instead, a consumer’s right to a refund would largely depend on the contractual terms and conditions agreed at the time of the booking. If the contract states that a refund will be offered if the holiday provider cancels the booking, then the consumer should be able to demand a refund.

It is possible that some contractual terms favour the accommodation provider (rather than the consumer) or that different terms apply during “extraordinary” circumstances. Whether such terms are fair under the Consumer Rights Act 2015 would depend on their wording and their transparency. The consumer group Which? explains the position in respect of a rented holiday cottage as follows:

If the T&Cs say that refunds will not be forthcoming in any circumstances, even if the cottage company has cancelled, this could be an ‘unfair term’ and may not be enforceable. If instead of a refund you’re told you need to rebook, check the terms to make sure this is all you’re entitled to. If you do accept a change of dates, make it clear this doesn’t mean you’re agreeing to a new booking at the prices applicable for the new date. Consider taking legal advice if you think the cancellation clauses in your contract could be unfair.49

If the holiday or accommodation provider refuses a refund, the following options may be available to the consumer (much would depend on the facts of the case):

- To approach the holiday homeowner directly and ask for a refund or fairer booking terms. This would only be appropriate in cases where the holiday rental company is acting as an intermediary.
- Consider making a section 75 claim under the Consumer Credit Act 1974 (CCA 1974) (see section 2 of this paper, above).

49 UK holiday cottage companies refuse to refund Easter breaks, Which?, 9 April 2020
If a debit card was used to make the holiday booking, it may be possible to use “chargeback” to get some (or all) of their money back (again, see section 2, above).

Regardless of whether a section 75 or chargeback claim is made, the consumer would need to demonstrate a breach of contract. This in turn would depend on the terms and conditions agreed with the hotel, B&B owner, holiday rental company etc. If the contract clearly states that a refund should be offered in the event of cancellation, then the consumer might approach their card provider on the basis that there has been a breach of contract.

According to the consumer group Which? during the first national lockdown period, some hotels, B&Bs, holiday lets etc were offering their customers the opportunity to reschedule their booking at no additional cost, others were offering some sort of credit voucher, and some were offering a cash refund. However, several holiday rental companies refused refunds for cancelled UK breaks, with some consumers being asked to pay an additional fee to rearrange a holiday they no longer wished to take. At the time, Which? argued that it was “unfair to put a consumer in a position of having to choose between losing their money or paying even more”.  

4.2 CMA intervention: holiday accommodation

On 30 April 2020, the CMA announced that it would investigate reports of businesses failing to respect consumer rights during the coronavirus crisis.  Holiday accommodation was named as one of several sectors being investigated by the CMA. An extract from the CMA’s press notice is reproduced below:

Through its Covid-19 Taskforce, which monitors market developments and identifies the big problems facing consumers, the Competition and Markets Authority (CMA) has seen increasing numbers of complaints in relation to cancellations and refunds. These now account for 4 out of 5 complaints being received into the Taskforce and so far include concerns about businesses refusing refunds or firms pressuring people to accept vouchers for holiday accommodation, which can only be used during a more expensive period.

Based on the complaints received, the CMA has identified 3 sectors of particular concern:

- weddings and private events

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50 Ibid
51 Section 219(4) and section 219(b), Enterprise Act 2002
holiday accommodation

• nurseries and childcare providers

It will tackle these areas as a priority and then move on to examine other sectors, based on the information received by the taskforce.

The CMA acknowledges that most businesses are acting reasonably in what are unprecedented circumstances, and the current crisis is placing everyone under pressure, but consumer rights cannot be ignored.

If it finds evidence that companies are failing to comply with the law, the CMA will take appropriate enforcement action, including moving quickly to court if a firm does not address its concerns. Individuals can also take their own legal action against unfair terms should they choose to. 52

Consumer protection legislation relevant to the CMA’s investigation includes the Consumer Rights Act 2015 (CRA 2015) and the Consumer Protection from Unfair Trading Regulations 2008 (CPRs). The CRA 2015 prohibits the use of unfair terms in contracts between businesses and consumers; the CPRs prohibit unfair commercial practices by businesses towards consumers. The CMA explained its position as follows:

Our COVID-19 taskforce is shining a light on some of the big issues facing consumers in wake of this pandemic. We are now seeing cancellation issues in their thousands. So far, the CMA has identified weddings, holiday accommodation and childcare as particular areas of concern.

The current situation is throwing up challenges for everyone, including businesses, but that does not mean that consumers should be deprived of their rights at this difficult time. If we find evidence that businesses are failing to comply with consumer protection law then we will take tough enforcement action to protect those rights.

If people have been affected by unfair cancellation terms in wake of COVID-19, they can report them to the CMA using the online form. 53

Whilst the CMA is not able to respond directly to every complaint it receives, the information provided will help the CMA to decide which issues to address as part of this rolling programme of work. 53

As well as investigating specific sectors, on 30 April 2021 the CMA also issued a Statement on consumer protection law in relation to cancellations and

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52 Competition and Markets Authority press notice, CMA to investigate concerns about cancellation policies, 30 April 2020

53 Competition and Markets Authority press notice, CMA to investigate concerns about cancellation policies, 30 April 2020
refunds during the pandemic. It said that for most consumer contracts, the CMA would expect a full refund to be issued where:

- a business has cancelled a contract without providing any of the promised goods or services
- a service is provided by a business, because this is prevented by restrictions that apply during the current lockdown
- a consumer cancels or is prevented from receiving the service, for example due to the restrictions that apply during the current lockdown

The CMA also said that businesses should not seek to profit from the “double recovery” of their money from the Government and customers.

On 9 June 2020, the CMA announced that Vacation Rentals (UK) Ltd, which operates accommodation sites including Hoseasons and Cottages.com, would give customers the option of a full refund if a booking has been cancelled because of restrictions associated with the coronavirus outbreak. Vacation Rentals voluntarily changed its policy following the CMA’s statement of 30 April 2020.

Whilst acknowledging that some firms faced financial challenges, the CMA said:

 […] it’s not right that people are being left hundreds or even thousands of pounds out of pocket - on top of having to sacrifice their holidays.

Consumer protection law exists for a reason; businesses must observe the law or face the possibility of enforcement action.

Consumers affected by unfair cancellation terms in the wake of Covid-19 are encouraged to report traders to the CMA using the CMA’s online form.

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54 Competition and Markets Authority, A statement from the CMA on consumer protection law in relation to cancellations and refunds due to coronavirus, 30 April 2020 (last updated 28 August 2020)
55 Ibid
56 Coronavirus: Holiday lettings firm owner reverses no-refund policy” BBC News, 9 June 2020
57 Competition and Markets Authority (CMA), Covid-19: Major holiday lets firm offers refunds after CMA action, press release, 9 June 2020
58 Coronavirus: Holiday lettings firm owner reverses no-refund policy” BBC News, 9 June 2020
Can I claim on my travel insurance?

A consumer whose holiday has been cancelled and has travel insurance should check their policy documents to see if they are covered. Much would depend on the type of travel insurance bought, the scope of its cover, and its general terms and conditions. If appropriate, the consumer should speak to their insurer to clarify the details of their cover and ask for confirmation of that advice in writing.

Information on travel insurance in the context of the coronavirus pandemic is also provided on a designated webpage provided by the Association of British Insurers (ABI). This page has specific sections on various areas of insurance, including travel insurance. Again, the overall message is for policyholders to speak to their insurers.

In general, insurers are likely to align their policies with FCDO advice. This means that if anyone decides to travel for non-essential reasons (contrary to UK Government advice), there is a risk that any existing travel insurance will be invalidated. The ABI have also advised that travel insurance is not designed to cover disinclination to travel where the FCDO has not advised against travel (or travel to a specific destination).
Where to go for help

Constituents affected by cancelled travel or holiday bookings, involving a large sum of money, might benefit from proper legal advice based on a full appraisal of the contractual terms and conditions agreed. Legal advice can be accessed free of charge from Citizens Advice Bureaus (CABs). The Citizens Advice website contains a useful search tool to help people to find their nearest CAB. The Library’s briefing paper, “Legal advice: where to go and how to pay” may also be of interest. There is also useful consumer information on the ABTA, ABI and gov.uk/coronavirus websites.[^59]

All consumers/travellers are advised to monitor FCDO advice and updates. Travelling restrictions can change at short notice.

[^59]: Travel information is also available from Simon Calder’s daily Q&A on Facebook and Instagram, see [https://twitter.com/SimonCalder](https://twitter.com/SimonCalder)
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