

HOLIDAY CLAIMS AND COVID-19: WHAT OPTIONS DO YOU HAVE IF YOUR TRAVEL PLANS ARE DISRUPTED?

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On 23rd March 2020 the UK government went into lockdown in an attempt to curb the spread of Covid-19 in the country. The Foreign and Commonwealth Office has advised British people against all non-essential travel abroad due to unprecedented border closures. In relation to cancelled travel plans, the FCO further advised travellers to get in touch with their airline, travel company, or other transport and accommodation provider, or their insurer. However, recent reports in the media suggest that some holidaymakers who have requested refunds have instead been offered credit notes, or deferred bookings. Many are, of course, concerned that deferred bookings might not suit them due to inability to travel at a later stage, or where credit notes have been offered, that these might not be viable if the companies go bankrupt. Some have also turned to their banks; in a number of cases, without success.

This short note will outline the legal position in relation to holidaymaker claims in the era of Covid-19, and will highlight the options available to travellers in these challenging times.

Package holidays

When it comes to package holidays, tour operators have an obligation to refund holidaymakers for cancelled trips (Regulation 13 of the Package Travel, Package Holidays and Package Tours Regulations 1992 and Regulation 13 of the Package Travel and Linked Travel Arrangement Regulations 2018). For package holidays booked prior to 1st July 2018, tour operators do not have an obligation to refund holidaymakers where the holiday was cancelled as a consequence of unforeseeable circumstances beyond the control of the tour operator. This means that if your package holiday was booked prior to that date, you may find yourself in difficulty when requesting a refund, as under the previous Regulations tour operators would be able to avail themselves of that defence.

The 2018 Travel Regulations do not contain the same defence, thus for any package holidays booked after 1st July 2018, the obligation to refund within 14 days remains even in the current circumstances. However, although the obligation remains, in practice tour operators will not be able to offer cash refunds to everyone, especially where they are facing liquidity problems due to the current crisis. Some tour operators and agencies have offered Refund Credit Notes ('RNAs') instead of cash refunds. RNAs entitle one to rebook a holiday at a future date or receive cash at the expiry of the credit note. The Association of British Travel Agents ('ABTA') has recently confirmed that RNAs attract the same protections as holidays, where the original booking was protected by either ATOL or ABTA.¹

ATOL is a compulsory government licensing scheme which protects travellers in case the company is unable to meet its obligations, i.e. where it goes bankrupt. ABTA offers slightly different policies to those offered by ATOL, and unlike ATOL, it is a voluntary scheme which travel agents can sign up to. Where your original booking was protected by ATOL/ABTA or both, any RNA's offered by the company in question will attract the same protection as your original booking. It is notable that holiday vouchers do not attract the same protections as RNAs; a holiday voucher will be useless if the company goes bankrupt. If you are unsure whether what you're being offered is a credit note or a holiday voucher, it is best to seek legal advice.

The Competition and Markets Authority ('CMA') has advised that consumers can be offered credits, vouchers, re-booking, or re-scheduling as an alternative to a refund, but it has warned that they should not be misled or pressured into accepting them; a refund should still be an option that is just as clearly and easily available. Any restrictions that apply to credits, vouchers, re-booking, or re-scheduling, such as the period in which credits must be used or services re-booked, must also be fair and made clear to consumers.²

Cancelled flights

Where an airline cancels a flight, the general rule is that the passenger is entitled to either (i) reimbursement, (ii) re-routing at the earliest opportunity,³ or (iii) re-routing at a later date (*EU Regulation 261/2004*). This is the position under the existing EU framework, which is binding on the UK during the transitional period. Although claims for compensation are usually possible in addition to one of the options above, compensation is not due where the carrier

¹ <https://www.abta.com/help-and-complaints/frequently-asked-questions>

² <https://www.gov.uk/government/publications/cma-to-investigate-concerns-about-cancellation-policies-during-the-coronavirus-covid-19-pandemic/the-coronavirus-covid-19-pandemic-consumer-contracts-cancellation-and-refunds>

³ This also applies to flights booked as part of a package holiday.

can prove that cancellation was caused by extraordinary circumstances that could not have been avoided even if all reasonable measures had been taken. One of the issues facing travellers in the current crisis is that many airlines have only offered passengers the option of re-routing (through the use of RNAs or holiday vouchers, for example). This is obviously problematic because the Regulation requires airlines to present passengers with a *choice* (see Articles 5 and 8 of EU Regulation 261/2004).

Accommodation and/or other travel arrangements

Where holidaymakers have booked accommodation or other travel independently (i.e. outside the scope of a travel package), their rights in respect of reimbursement would as a general rule be a matter of contract. Ascertaining what one's rights and obligations are in this context is a highly fact-specific exercise and depends on a number of things, such as who the parties are, as well as the nature of the contractual relationship between them. If you are unsure about the nature of your contractual relationship with your accommodation or travel provider, it is best to seek legal advice.

Insurance claims

Holidaymakers can also recover from their insurer. Most insurers provide coverage for cancellation where the FCO has issued advice on travelling after insurance coverage was purchased, as long as it is still valid when the FCO travel guidance is published. The nature and extent of coverage depends on the contractual relationship between the insured and the insurer. If you are unsure about the extent of coverage provided by your insurer, it is best to seek legal advice.

Consumer credit rights: chargebacks and s.75 Consumer Credit Act 1974

It is possible for holidaymakers to claim back their money from or through their bank or credit card company. The general rule in common law is that lenders are not usually responsible for misrepresentation or breach of contract on the part of the supplier. However, section 75 of the Consumer Credit Act 1974 creates a concurrent and equal liability on behalf of the supplier and the creditor for any purchases above £100 and less than £30,000. This means that where an airline ticket has been purchased using a credit card and the airline company is subsequently unable to provide a refund (because, for example, it has gone bankrupt), the consumer has the option to bring a claim against the creditor, i.e. the bank or credit card company. This does not apply to purchases made using a debit card. Recent reports in the media highlight that some consumers' requests for reimbursement under s.75 of the Act have been blocked by banks and credit card companies on the basis that all other remedies

against the company need to be exhausted first, before making a claim against the bank or credit card company. No such requirement is imposed by s.75; it is possible to claim against both the retailer and the creditor, although payment can only be taken from one of them.

Apart from the legal remedy under s.75, consumers also have recourse to a non-legal remedy, called a chargeback. Chargeback is a mechanism for card providers to reclaim money from the retailer's bank where the product or service hasn't been provided. Unlike s.75, chargeback is not a legal right. It can, however, be used where purchases are made with a debit card. The request for chargeback should be addressed to the card provider or bank.

What are your options?

If your holiday plans are disrupted because of the Covid-19 crisis, you should consider the following:

- (i) Approach the relevant company by writing to them.
- (ii) Approach your insurer directly. Make sure you are clear on the extent of your coverage and how to claim from your insurer. Individual insurers have their own application process, so it is worth checking with them on how they process claims under the terms of the insurance.
- (iii) Write to your bank or credit card provider requesting a refund under s.75 or a chargeback. Rejected claims under s.75 can be appealed to the [Financial Ombudsman](#).
- (iv) Issue a small claim against the relevant company.

Thousands of holidaymakers have effectively been left without a real remedy against their tour operator, airline, or other travel or accommodation provider. It is anticipated that the number of small claims relating to disrupted travel plans will rise sharply in the next few months, with the number of cancelled flights and package holidays rising in the upcoming months. It is important to remember that a lot of companies might go bankrupt in the near future, as social distancing rules continue to remain in place. It is thus important to claim against the correct entity at the right time. Seeking legal advice early is crucial. In the meantime, the CMA has launched a new programme to investigate the rising complaints against businesses failing to respect cancellation rights.⁴

⁴ <https://www.gov.uk/government/news/covid-19-cma-to-investigate-cancellation-policy-concerns>

Whilst every effort has been taken to ensure the accuracy of the contents of this article, the position in relation to Covid-19 is rapidly changing. This document should not be used as a substitute for obtaining legal advice. To discuss this further with the author or to instruct our barristers for advice on this or any other matter, please contact our clerks David Fielder (Email - david.fielder@3pb.co.uk) or James Parks (Email - james.parks@3pb.co.uk).

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