



# **Consumer Awareness: COVID-19 Travel Cancellations**

Issued: 4<sup>th</sup> June 2020

Updated: 24<sup>th</sup> August 2020

## **Background**

The Office of Fair Trading (OFT) has received numerous complaints and queries relating to the cancellation of travel arrangements and holidays as a result of the Covid-19 crisis. These include cancellations by airlines, cruise ships, package holiday operators and other travel service providers (**Travel Operators**).

The scale of these cancellations globally is unprecedented as the travel industry has been severely affected by the significant travel restrictions imposed by Governments for public health reasons. Even within the European Union (EU) where there are well-established traveller rights Travel Operators have been slow to comply with consumer law to the detriment of affected consumers.

### **Obtaining redress in the current climate**

As a general rule consumers are legally entitled to a refund for cancelled travel arrangements, however they should understand that obtaining one in the current climate may be difficult given the sheer volume of cancellations and the difficult financial position that some Travel Operators find themselves in. Most Travel Operators are strongly pushing consumers to accept vouchers, however these need not be accepted unless you are happy with them and you understand the voucher terms. Note that vouchers are not generally insolvency protected.

**Note: Even though you may be legally entitled to it, it may be difficult to get a refund in the current climate!**

The OFT is issuing this guidance which aims to assist consumers to understand their legal rights and what they may do to seek practical redress in this rapidly evolving scenario.

## **Cancellations by Consumers**

The guidance below is aimed at assisting consumers whose travel arrangements have been cancelled by Travel Operators.

Where the travel arrangements are cancelled by the consumer, as opposed to the Travel Operator, any redress will be determined in accordance with the terms and conditions of the contract they entered into with the Travel Operator and by any applicable legislation. The notable exception is where the consumer is prevented from travelling by Government's public health measures or other similar restrictions.

**Note: If consumers cancel their travel arrangements they may be unable to get a refund or other redress!**

The OFT strongly recommends that before cancelling any travel arrangements consumers should refer to the Foreign Commonwealth Office website and its equivalent in the country they intend to travel to determine if there are any such restrictions or quarantine requirements. If in doubt they should contact

the Travel Operator for assistance before cancelling. This applies to upcoming instalments for holidays where consumers have already paid a deposit.

## **Guidance on Accepting Vouchers and Refund Credit Notes**

As a general rule the OFT does not recommend that consumers accept vouchers in return for a cancelled travel arrangement. The main reason is because vouchers are not generally insolvency protected. Where possible consumers should therefore ask for a refund credit note.

**Note: You should push for a credit note as opposed to a voucher as the latter will not be insolvency protected!**

Before accepting any voucher make sure you understand the vouchers' terms and conditions and whether you are happy to accept these.

If you intend to travel with the Travel Operator in the future, consider accepting refund credit notes instead of a refund as this will be simpler and easier for you to get.

If you are willing to accept a refund credit note we recommend that they meet the following criteria, in line with the EU Commission's [recommendations](#) of the 13<sup>th</sup> May 2020:

- They benefit from insolvency protection (to protect you if the business goes under).
- They should have a minimum validity period of 12 months and, if unused, should entitle you to a refund 14 days after the end of their validity period (essentially the obligation to refund is delayed to the expiry of the refund credit note if unused by the consumer). This should apply to the refund of any unused amounts of the refund credit note even where part of it has been used.
- They should be usable for new bookings made before their expiry date even if the service is to be provided after that date.
- Where applicable, refund credit notes should be usable for any service provided by the Travel Operator.

You should note however that if you opt for a refund credit note you will not have immediate access to the money you have paid and that you run the risk of losing your money if the business goes bust due to the crisis. Opting for a refund credit note instead of a voucher however should mean that you may have a claim for the money owed to you by the Travel Operator, however in reality this may be difficult and expensive to recover.

## **Cancelled Package Holidays**

### **Your Rights**

The package travel legislation is EU driven and transposed into Gibraltar law in the Package Travel, Package Holidays and Package Tours Act 1994. They provide consumers with significant rights that remain unchanged as a result of the Covid-19 crisis. Where a consumer is unable to travel because their package holiday has been cancelled by the Travel Operator they are legally entitled to a full refund within 14 days of the cancellation.

### **OFT Guidance**

You should always in the first instance attempt to resolve your claim directly with the Travel Operator. Many Travel Operators are pushing consumers to accept vouchers. You should consider accepting a voucher or refund credit note offered if it is appropriate for you (see OFT Guidance on Accepting Vouchers and Refund Credit Notes above). You should be acquainted with its terms and conditions and in particular when the voucher will expire, whether you can get a refund if you do not use it and whether you can use it for other packages or travel arrangements offered by the Travel Operator.

If you are dissatisfied with the response of a Travel Operator you may want to consider a chargeback or claim on the bank card you used to make the payment (see below).

Local travel agents may not be liable for refunds for cancelled packages offered by third parties, however this depends on how the travel arrangements were booked. Where, for example, local travel agents have:

1. sold you more than one travel service together as part of the same contract;
2. with a single total price; or
3. as part of the same deal,

they may be considered the package organisers. If so, they shall be legally obliged to offer you a refund or other redress as per the Package Travel, Package Holidays and Package Tours Act 1994.

### **Pursuing a Refund**

If a refund credit note is not appropriate, insist on a refund in writing. Under EU law refunds should be paid within 14 days of the cancellation. Note however that operators are struggling to pay refunds and you may therefore need to wait significantly longer than usual for a refund and you may have to keep on contacting the Travel Operator or pursue the matter further. You should always in the first instance attempt to resolve your claim directly with the Travel Operator.

If you are dissatisfied with the response from the operator you may want to consider a chargeback or claim on the card you used to make the payment (see below).

If you have exhausted all options with the airline directly, you can consider alternative dispute resolution (**ADR**) or taking legal action against the business. You may however experience difficulties and delays with these approaches given the current volume of complaints. Taking legal action may also require you to pay fees.

### **Cancelled Flights**

This guidance supersedes the OFT awareness on flight cancellations issued on the 22<sup>nd</sup> April 2020.

#### **EU Passenger Rights**

If your flight is cancelled as a result of the COVID-19 crisis you have rights under EU legislation, if:

- you are flying on an airline registered in an EU Member State;
- your flight departs from an Airport located in an EU Member State; or
- your flight lands in an Airport located in an EU Member State.



As a result all flights from or to Gibraltar, with the exception of flights directly from Gibraltar to Morocco (see below), are covered.

Your rights to a refund remain unchanged by COVID-19 and you are not obliged to accept flight vouchers. Airlines should offer you the opportunity to claim a refund. The EU [Commission](#) and [Parliament](#) have provided guidelines in the context of the developing situation with Covid-19 reaffirming that airlines continue to have the obligation to offer passengers the following options when cancelling flights:

- Refund;
- Re-routing at the earliest convenience; or
- Re-routing at a later date, chosen by the passenger.

### **OFT Guidance**

You should always in the first instance attempt to resolve your claim directly with the airline. Airlines are presently suffering an extremely large volume of queries regarding cancellations and there are long waiting times to talk to airlines, however, if your flight has been cancelled note that you will not lose your right to reimbursement or re-routing and refunds if they do not resolve your claim prior to the date of departure.

You should consider accepting a refund credit note offered if it is appropriate for you (see OFT Guidance on Accepting Vouchers and Refund Credit Notes above). If a refund is more appropriate however you should always put a request for a refund in writing. Many airlines require you to make refund requests through their website. You should have your booking details available.

If you are dissatisfied with the response of an airline you may want to consider a chargeback or claim on the card you used to make the payment (see below).

If you have exhausted all options with the airline directly, you can consider ADR. Airlines should send you information on whether ADR is available in their final response. If you have not received a final response in eight or more weeks, you may also be able to refer your complaint to the ADR body directly. The UK Civil Aviation Authority sets out which airlines have an ADR scheme. Both British Airways and EasyJet have [ADR schemes](#).

### **Flights to and from Morocco**

Flights to and from Gibraltar operated by Royal Air Maroc Express are not covered by the EU legislation. Their [website](#) has information about the airline's COVID-19 measures which appear to offer 18 month vouchers that, if unused, will entitle the holder to a refund.

### **Director of Civil Aviation Assistance**

If you have exhausted the available avenues for any flight cancellation, and you remain unhappy with the outcome you can contact the Director of Civil Aviation ([dca@gibraltar.gov.gi](mailto:dca@gibraltar.gov.gi)) who will be able to advise on possible options that remain.

## **Cancelled Individual Travel Arrangements (Excluding Flights)**

### **Your Rights**

Whereas these travel arrangements are not protected locally by EU law, contract law applies and may protect consumers. Under common law where an event occurs after the formation of the contract which renders further performance of the contract impossible, the contract may be discharged by frustration. In such cases advance payments are generally recoverable.

Where individual travel and holiday arrangements cannot be performed as a result of the pandemic the OFT considers that you will generally have a right to obtain a refund as the service has not been provided and the contract is therefore frustrated.

You should note however that contracts may contain force majeure clauses providing for such unforeseen circumstances. In such cases, the contract will determine your entitlement to a refund or redress for a cancellation.

Local travel agents may not be liable for refunds for cancelled travel arrangements offered by third parties, however this depends on how the travel arrangements were booked.

### **OFT Guidance**

In the first instance you should always attempt to resolve your claim directly with the Travel Operator or with the local travel agent you used. If a voucher is offered the OFT would recommend that you ask for a refund credit note instead. You should only consider accepting a voucher or a refund credit note if it is appropriate for you (see OFT Guidance on Accepting Vouchers and Refund Credit Notes above). If a refund is more appropriate however you should always put a request for a refund in writing. Note that operators are struggling to pay refunds and you may therefore need to wait longer than usual for a refund and you may have to keep on contacting the Travel Operator or pursue the matter further.

### **Best Practise for Local Travel Agents**

Where you have used a local travel agent they should assist you in trying to obtain redress. If the Agent receives a refund on your behalf this should be refunded to you without delay or deductions. Where an Agent is finding it hard to obtain a refund for you, they should try to obtain a voucher that is:

- insolvency protected,
- for no more than 12 months, after which, (if unused) you would once again be entitled to a refund;
- usable for new bookings after the voucher expiry date; and
- usable for any service provided by the business.

If you are dissatisfied with the response from the operator you may want to consider a chargeback or claim on the card you used to make the payment (see below).

If you and have exhausted all options with the Travel Operator directly, you can consider taking legal action. This however can be a long and expensive process for a small claim.



## **Chargeback and Claiming on Your Card**

If you have unsuccessfully exhausted all avenues with the business and you have paid with a debit or credit card you could try to chargeback on your debit card or making a claim under section 75 of the Consumer Credit Act for a UK issued credit card. This is a protection offered by debit or credit card providers where you do not receive the goods you bought using them. Note however that providing a refund may be at the discretion of the provider. To claim you may need provide evidence that you have tried to resolve the dispute with the Travel Operator first.

## **Insurance**

Insurers may cover you for cancellations if the Foreign and Commonwealth Office has advised against travel to your destination when you are due to travel. You should check the terms and conditions of any travel insurance policy that you may have to determine if you are able to recover any losses from them. It may be possible to get the insurer's position in relation to Covid-19 cancellations from their website.

## **Contact the OFT**

If you have had a cancellation and require assistance the OFT's Consumer Protection team may be able to assist. Contact us:

[consumer.protection@oft.gov.gi](mailto:consumer.protection@oft.gov.gi)

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**This document is issued by the OFT for general guidance only to assist affected consumers in Gibraltar. It should not be used or relied upon as legal advice.**