



Industry Awareness: COVID-19 Travel Cancellations

Issued: 9th June 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**). Many of these have been booked by local consumers through local travel agents (**Travel Agents**).

As a general rule consumers are legally entitled to a refund for cancelled travel arrangements. The OFT is issuing this guidance which aims to assist Travel Agents to understand their, and Travel Operators, obligations to consumers and what other practical redress may be able offered to consumers in this rapidly evolving situation.

Cancelled Package Holidays

Consumers' rights

Consumers' rights are set out in the [Package Travel, Package Holidays and Package Tours Act 1994](#) (the **Act**). The Act provides consumers with significant legal rights which remain unchanged as a result of the Covid-19 crisis.

A trip or holiday is regarded as a 'package' where two or more travel services for the purpose of the same trip or holiday (such as flights, accommodation, car hire or other tourist services such as guided tours) are:

- combined by one trader;
- purchased from a single point of sale; or
- offered, sold or charged at an inclusive price.

Where a consumer is unable to travel because their package has been cancelled they are entitled to a full refund within 14 days of the cancellation. Package organisers must therefore offer the consumer the right to a full refund for a cancellation if they have booked the package with them.

OFT guidance on offering vouchers

If a consumer is willing to arrange another trip or holiday with your business in the future you may be able to offer a voucher for the full value of the price paid instead of a refund. This may be simpler and easier for both parties, but this is up to the consumers' discretion.

If you offer a voucher to a consumer you should do so in writing setting out that they are not obliged to accept the voucher and that they are entitled to a refund should they request it. Any vouchers offered should be in line with the EU Commission's [recommendations](#) of the 13th May 2020 and should meet the following criteria:

- Vouchers should benefit from insolvency protection (to protect the consumer if the business goes under).

- Vouchers should have a minimum validity period of 12 months and, if unused, should entitle the consumer to a refund 14 days after the end of their validity period (essentially the obligation to refund is delayed to the expiry of the voucher if unused by the consumer). This should apply to the refund of any unused amounts of the voucher even where part of it has been used.
- Vouchers should be usable for new bookings made before their expiry date even if the service is to be provided after that date.
- Where applicable, vouchers should be usable for any service provided by the Travel Operator.

Pursuing a refund

Note that if a voucher is not appropriate for the consumer they can insist on a refund. We note that some Travel Operators are struggling to pay refunds. If this is the case with your business you should inform your consumers immediately that they may need to wait longer than usual for a refund. Remember that if the consumer is not satisfied with your response they may:

- submit a complaint to the OFT for investigation;
- where applicable, consider a chargeback or claim on the card they used to pay you;
- engage in Alternative Dispute Resolution; and
- start civil proceedings against you.

Cancelled Flights

EU passenger rights

If flights are cancelled as a result of the COVID-19 crisis consumers have rights under EU legislation, if:

- they are flying on an airline registered in an EU Member State;
- the flight departs from an airport located in an EU Member State; or
- the 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.

Consumers' rights to a refund remain unchanged by COVID-19 and they are not obliged to accept flight vouchers. Airlines should offer 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

Travel Agents should always attempt to assist in resolving consumer claims with the airline where flights were booked through them. Obviously airlines are presently suffering an extremely large volume of queries regarding cancellations and there are long waiting times to talk to airlines. However, if a flight



has been cancelled note that consumers should not lose their right to reimbursement or re-routing and refunds if their claims are not resolved prior to the date of departure.

Flights to and from Morocco

Flights to and from Gibraltar operated by Royal Air Maroc Express are not covered by the EU Regulations, however Travel Agents should nevertheless offer assistance where flights have been booked through them.

Royal Air Maroc Express's [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 consumer claims against applicable airlines remain unresolved the Director of Civil Aviation (dca@gibraltar.gov.gi) may be able to advise on possible options that remain

Cancelled Individual Travel Arrangements (Excluding Flights)

The consumer's rights

Whereas these travel arrangements are not protected locally by EU law, contract law applies. Where individual travel and holiday arrangements cannot be performed as a result of the pandemic (and where the contract is not covered by a force majeure clause providing for such unforeseen circumstances) the OFT considers that consumers will generally have a right to obtain a refund as the service has not been provided and the contract is frustrated.

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

OFT guidance

Local travel agents should assist consumers in trying to obtain redress. If a Travel Agent receives a refund on behalf of a consumer this should be refunded to them without delay or deductions. Where an Agent is finding it hard to obtain a refund for a consumer, they should try to obtain a voucher that is:

- insolvency protected,
- for no more than 12 months, after which, (if unused) they 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.

Note that if a voucher is not appropriate for the consumer they may be able to insist on a refund. We note that some Travel Operators are struggling to pay refunds. If so, you will need to inform consumers that they may need to wait longer than usual for a refund. Remember that if the consumer is not satisfied with your response they may:

- submit a complaint to the OFT for investigation;
- where applicable, consider a chargeback or claim on the card they used to pay you;
- engage in Alternative Dispute Resolution; or



start civil proceedings against you.

Cancellations by Consumers

Where the travel arrangements are cancelled by the consumer, and not your business or the Travel Operator, any redress should be determined in accordance with the terms and conditions of the contract they entered into with the Travel Operator and by any applicable legislation. This should have been made available to the consumer in writing before they entered into the contract. The notable exception is where the consumer is prevented from travelling by Government's public health measures or other similar restrictions which are common in light of the pandemic.

The OFT recommends that the Foreign Commonwealth Office website and its equivalent in the country the consumer is intending to travel to, should be consulted to determine if there are any such restrictions or quarantine requirements. Travel Agents should offer assistance to the consumer in this regard before they cancel. This applies to upcoming instalments for holidays where consumers have already paid a deposit.

Contact the OFT

The OFT is conscious of the unprecedented scale of these cancellations globally and the deep impact this has had on the travel industry. If you require any assistance understanding your legal obligations to your customers and want to discuss any specific consumer issues your business may be facing in light of COVID-19, please contact the OFT's Consumer Protection team:

consumer.protection@oft.gov.gi

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This document is issued for general guidance only and should not be used or relied upon as legal advice.