

From: Cecilia Parker Aranha
Director, Consumer Group

10 July 2020

Dear Sir/Madam

CMA open letter to package travel sector

1. 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 take enforcement action if a firm breaches consumer protection law and fails to respond to warnings.¹
2. The CMA is particularly concerned about the harm which consumers² are suffering in the package travel sector. Intelligence suggests that businesses may not be providing the refunds required by consumer law when package holiday contracts are terminated as a result of COVID-19. The CMA expects that consumers who are entitled to refunds will be paid those refunds, and that businesses will comply with consumer law.

Complaints to the CMA regarding package holiday organisers

3. Since launching the Taskforce, the CMA has received over 17,500 complaints from consumers about businesses in the package travel sector, including your company.
4. The complaints that we have received relate to package holiday contracts that have been terminated (whether by the organiser or by the traveller) since March 2020 as a consequence of the COVID-19 pandemic.

¹ <https://www.gov.uk/government/news/update-on-cma-covid-19-taskforce>

² References to 'consumers' throughout includes 'Travellers' within the meaning of the PTRs.

5. The CMA's initial review of the complaints indicates that businesses may have engaged in, and may still be engaging in, certain practices contrary to consumer law. In particular, these complaints suggest that:
- a. businesses have not been meeting the requirements of the Package Travel and Linked Travel Arrangements Regulations 2018 ("**PTRs**"). These provide a statutory requirement to provide refunds without undue delay and in any event not later than 14 days from termination.³
 - b. businesses have been engaging in unfair commercial practices, for example, providing inadequate or misleading information to consumers about their statutory rights. This is potentially in breach of the Consumer Protection from Unfair Trading Regulations 2008 ("**CPRs**").⁴

The CMA has power to bring enforcement action in relation to such breaches under the Enterprise Act 2002.

6. In general, the harmful conduct includes:
- Consumers not being offered and/or provided full cash refunds in accordance with their statutory rights. This includes consumers not receiving refunds without undue delay and in any event not later than 14 days after the package travel contract has been terminated. It also includes consumers only being offered a voucher or the right to rebook a holiday instead of a refund.
 - Consumers losing their deposits and/or being charged cancellation fees when exercising their statutory right to terminate a package holiday contract and when they are entitled to a full refund.
 - Consumers not being provided with clear information and/or being otherwise misled about their statutory rights.
 - Consumers facing significant barriers when trying to exercise their statutory rights. For example, consumers being asked to request a refund on their terminated package booking by telephone, but being unable to readily contact businesses in this way.
 - Consumers being unable to contact businesses effectively to discuss other concerns, such as wanting to pay their balance in order not to forfeit their deposit as a result of late payment.

³ See PTRs, regulation 14 as well as regulations 12 and 13.

⁴ General guidance on the CPRs can be found [here](#).

What consumer protection law requires of your company and the CMA's expectations

7. The CMA recognises that the pandemic has created extraordinary pressures on package holiday businesses. Although we were sympathetic to the challenges faced in the early days of the pandemic, it is nonetheless important that businesses comply with consumer law.
8. Where businesses have breached consumer law, the CMA expects them to take immediate action to bring themselves into compliance and address any consumer harm arising from the breaches. We recommend that you check your practices and policies are in line with the requirements of consumer law and make any changes where necessary. For example:
 - a. As referred to in paragraph 5 above, consumers have a statutory right to a full cash refund within 14 days from termination of their package holiday contract in certain circumstances. This includes where:
 - i. a package holiday contract is terminated by an organiser where it is prevented from performing the contract because of unavoidable and extraordinary circumstances, or
 - ii. where the consumer terminates the contract in the event of unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and which significantly affect (a) the performance of the package, or (b) the carriage of passengers to the destination.

We expect businesses to comply with these requirements where package holiday contracts are terminated due to the COVID-19 pandemic. We are aware that many consumers have been promised full cash refunds, but these have yet to be paid, contrary to the requirements of the PTRs. We expect businesses to provide such refunds promptly and without undue delay (bearing in mind payment should have been made within 14 days of termination).

- b. When consumers are contacted, either about existing or new bookings, they should be given clear and legally correct information about their options following termination. These should always include the option of receiving a full cash refund without undue delay and in any event not later than 14 days.
- c. Where consumers have not been provided with full or accurate information

about their statutory rights, we consider it is important that this is corrected so consumers are able to make the decision that is right for them. Accordingly, we would expect businesses to take proactive and prompt steps to contact their customers who may have been provided with incorrect information and/or denied a cash refund to which they were entitled by law and:

- i. explain that they have (or as the case may be, had) a statutory right to a refund;
 - ii. explain the options available to the consumer, including how to obtain a refund;
 - iii. where the 14-day statutory deadline has already been missed as at the date of this letter, ensure that any refunds due are paid promptly and without undue delay (bearing in mind payment should have been made within 14 days of termination); and
 - iv. for all other cancelled bookings, make payment of refunds within the 14-day statutory period.
- d. Package travel organisers and/or retailers must not direct a consumer elsewhere if that consumer requests a cash refund from the company in accordance with UK consumer protection law, for example by asking them to claim from insurers or payment card businesses.
- e. Furthermore, businesses should be proactively communicating with consumers and letting them know when they will be paid their refund, keeping in mind the requirements of the PTRs.

Why this is important

9. Businesses which do not comply with consumer law risk enforcement action from the CMA or local Trading Standards. While the CMA is not beginning enforcement action against your company at present, we continue to monitor the complaints and intelligence that we are receiving. The CMA may decide to prioritise enforcement action against you in line with its [Prioritisation Principles](#), for example if it continues to receive complaints about your company.
10. In addition to any action which the CMA or local authority Trading Standards departments may take, individual consumers also have the option of pursuing a claim against businesses in the small claims court.

Yours faithfully,

Cecilia Parker Aranha
Director