



Department
for Transport

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From the Parliamentary
Under Secretary of State
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30 October 2020

Dear Vaughan and Lee,

Thank you for your letter of 18 September to Grant Shapps regarding the impact of local lockdowns measures in Wales on holiday bookings. I am replying as Minister responsible for aviation.

I will continue to work collaboratively with the CAA, industry and consumer groups to navigate the unprecedented disruption in the travel sector and find a way forward which does not put consumers at a disadvantage, whilst also supporting the sector with its recovery.

The COVID-19 pandemic is still evolving and I fully appreciate the unprecedented challenges the aviation sector faces. I do also recognise the personal and financial worries of consumers during this challenging time.

The Government has been clear that the rights of consumers and the obligations of businesses remain unchanged. The CAA's review into refund policies and practices stressed the need to ensure that consumers can continue to exercise their rights effectively. It should not be unduly difficult for any consumer to receive a refund when entitled.

The legal 'lockdown' restrictions to date have been imposed via the Public Health (Control of Disease) Act 1984 ("PHA"). The regulations were made in response to the serious and imminent threat to public health caused by the spread of coronavirus. It is compulsory that members of the public adhere to these rules so that they are effective in protecting public health and there are penalties for non-compliance. In some areas, additional Devolved Administration may also impose restrictions, and these restrictions carry the same legal enforceability. In other words, they carry the same weight and enforceability as UK rules.

These rules may put some people at a disadvantage, as they are unable to travel without breaching Government regulations. We recognise that these people will be concerned about refunds and insurance policies.

The Competitions and Markets Authority have recently provided guidance to clarify when consumers who cannot access services because of local lockdown restrictions are entitled to a refund. I have urged Industry to consider how to apply this guidance fairly and practically to support consumers in those circumstances.

In situations where an airline has confirmed that the flight will go ahead but the individual chooses not to travel, the airline may be able to offer a refund, allow a change in the booking to a later date or the consumer's travel insurance may be able to provide assistance. Whether the consumer is entitled to a refund will likely depend on the terms and conditions of their contract with the airline or travel provider. However, the Competition and Markets Authority (CMA) recognises that a wide range of contracts have been affected due to COVID-19.

Where a contract is not performed as agreed, the CMA considers that consumer protection law will generally allow consumers to obtain a refund. In particular, for most consumer contracts the CMA would expect a consumer to be offered a full refund where:

- A business has cancelled a contract without providing any of the promised goods or services
- No service is provided by a business, for example because this is prevented by Government public health measures
- A consumer cancels, or is prevented from receiving any services, because Government public health measures mean they are not allowed to use the services

If a consumer cancels a contract because they no longer want the service, even though the service can still be provided as agreed, the CMA's view is that the consumer will be entitled to a refund in line with the applicable terms and conditions (on the assumption those terms are fair). This information can be found at: 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

Also, under the Consumer Rights Act 2015 if a term in a consumer contract is assessed by a court as unfair, the term will not be binding on the consumer even if the consumer has accepted it. The Act defines an unfair term as one which causes a significant imbalance in the parties' rights and obligations under the contract to the detriment of the consumer.

The Citizens Advice consumer helpline on 0808 223 1133 and www.citizensadvice.org.uk/ will be able to advise consumers on the procedure and costs of taking such cases to the small claims court if they believe that any of the terms and conditions in the contract with the travel provider are unfair. The small claims procedure provides the means to pursue a claim up to £10,000 through the civil courts at a modest cost and without the need of a solicitor.

If consumers are unable to get in touch with the business and payment was made using a credit card, consumers may be able to seek redress from the credit card company under Section 75 of the Consumer Credit Act 1974. The Act holds the credit card provider (this can be a credit card company or bank) jointly and severally liable for any breach of contract by the supplier (retailer or trader). This applies to purchases between £100 and £30,000 and a claim can usually be made within six years of the transaction date.

The Government is encouraging the industry to act fairly during this unprecedented time but, where enforcement bodies have significant evidence of businesses taking advantage of the crisis we would expect them to take action. In addition, the CMA launched its COVID-19 Taskforce in April to identify, monitor and respond to competition and consumer problems arising from COVID-19 and the measures taken to contain it. Where there is evidence that businesses have breached competition or consumer protection law, the CMA will take enforcement action if warranted. Further information on the Taskforce can be found at: www.gov.uk/government/publications/covid-19-cma-taskforce/cma-covid-19-taskforce

Communication of clear information to passengers is essential and the points you have raised in your correspondence are important. Myself and my officials as part of our ongoing communication with the sector will raise these issues. I have also shared your letter with the Department for Business, Energy & Industrial Strategy, to ensure a coordinated approach on this matter when engaging with the sector.

Please also find attached a letter which I recently sent to Airlines to remind them of their legal responsibilities.

Yours sincerely,



ROBERT COURTS MP

MINISTER FOR AVIATION, MARITIME AND SECURITY



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27 October 2020

Dear Colleague,

Thank you for your extraordinary efforts to serve your customers while protecting your business in these difficult times. I appreciate your efforts to work collaboratively with Government and the CAA to navigate the unprecedented disruption in the travel sector.

I will continue to work with industry and consumer groups to find a way forward, which does not put consumers at a disadvantage, while also supporting the sector with recovery.

The COVID-19 pandemic is still evolving and I fully appreciate the unprecedented challenges the aviation sector faces. I do also recognise the personal and financial worries of consumers during this challenging time.

The Government has been clear that the rights of consumers and the obligations of businesses remain unchanged. I, therefore, appreciate your commitment, engagement and cooperation with the CAA's review into refund policies and practices to ensure that consumers continue to exercise their rights effectively. It should not be unduly difficult for any consumer to receive a refund when entitled.

The legal 'lockdown' restrictions to date have been imposed via the Public Health (Control of Disease) Act 1984 ("PHA"). The regulations were made in response to the serious and imminent threat to public health caused by the spread of coronavirus. It is compulsory that members of the public adhere to these rules so that they are effective in protecting public health, and there are penalties for non-compliance. In some areas, additional Devolved Administration legislation may also impose restrictions to some of your customers and these restrictions carry the same legal enforceability. In other words, they carry the same weight and enforceability as UK rules.

These rules may put some of your customers at a disadvantage, as they are unable to travel without breaching Government regulations. However, I also

understand that following these rules will have an impact in your operations and your ability to offer a safe service for your staff and customers, while maintaining your business viability.

I note that the Competitions and Markets Authority have recently provided guidance to clarify when consumers who cannot access services because of local lockdown restrictions are entitled to a refund. This guidance may apply to you and your customers and I urge you to consider how to apply them fairly and practically to support consumers in those circumstances.

I also appreciate that cancellations and refunds due to local restrictions have adverse impacts on your business and I am equally concerned to understand these impacts. Government values the contribution of the aviation sector to the UK economy. Companies in the sector can draw on an unprecedented package of economic measures throughout this pandemic. However, the ability for customers, who are subject to local lockdown restrictions, to receive a refund or reschedule travel, should not be impeded.

During these last seven months we have engaged closely with the industry, to understand your concerns and to gather evidence. My officials and I will continue to engage closely with you. I would like to thank you all again for all your work and engagement during this challenging time.

Yours sincerely,



ROBERT COURTS

MINISTER FOR AVIATION, MARITIME AND SECURITY