

The impact of Coronavirus on the package travel industry

Updated as of 24 March 2020

The travel industry is being rocked by the impact of coronavirus (COVID-19). Businesses and consumers are cancelling international travel, conferences and events are being postponed and hotels are seeing bookings decline by up to 50% compared with last year.

A key question for travel providers is whether they can cancel contracts as a result of the coronavirus? The answer will often depend on whether the contract is for a package holiday which is covered by the Package Travel Regulations (PTRs).

UPDATE

On 19th March the European Commission announced that it is relaxing the PTRs in order to help travel operators retain working capital. A copy of the European Commission's note is available here – https://ec.europa.eu/info/sites/info/files/coronavirus_info_ptd_19.3.2020.pdf.

The Commission's guidance states *"Having regard to the strains on liquidity of tour operators because of missing new bookings coupled with reimbursement claims, travellers should consider accepting that their package tour is postponed to a later point in time. Having regard to the current uncertainty to make travel plans, that could be done by means of a credit note (so-called "voucher"). However, the traveller should have the possibility to ask for a full refund if, eventually, he or she does not make use of the voucher. Moreover, it should be ensured that the voucher is covered by appropriate insolvency protection."*

The Commission's guidance gives travel operators the right to provide credit notes / vouchers instead of a full refund. However, the purpose of this change is reduce immediate cash-flow concerns for travel operators rather than removing the obligation to ever pay refunds for package holidays which are cancelled as a result of the coronavirus outbreak. It is important to note that the Commission's guidance provides that customers will still have the right to get a refund at the later date if they don't use the voucher and the travel operator is still required to maintain the insolvency protection which is required under the PTRs.

It is not yet known whether the UK will apply the same relaxation to the PTRs. Whilst there have been indications that similar measures will be applied, there has not yet been an official announcement. Despite this it appears that some travel operators in the UK have already issued policies stating that customers will be

given a voucher or credit note or directing them to claim from their travel insurance provider. These policies are not compliant with the PTRs and as a result the travel operators could face claims from customers. However, the travel operators may have taken a commercial decision to accept the risk of such claims in order to retain the cash within their businesses at this crucial stage.

One way in which travel operators can seek to keep cash in their business rather than paying customer refunds is to get customers to accept vouchers by offering incentives such as discounts, priority booking, upgrades or added extras.

Is it a package holiday?

A package holiday is a combination of at least two different types of travel services, which are listed below:

- transport (such as a flight, coach or train but not transfers from an airport);
- accommodation (such as a hotel, villa or apartment);
- car rental; and/or
- a tourist service (such as a tour guide or a trip to a historical attraction) where this is a significant part of the holiday either because of its value or because it is an essential part of the trip.

Examples of a package holiday would include a booking consisting of flights and villa advertised for a single price, or a city break package including a stay in a hotel, a ticket to a theme park, and return coach travel.

Can a customer cancel a package holiday due to coronavirus?

The PTRs provide customers with an unrestricted right to cancel their package holiday contract 'at any time before the start of the package' but generally requires them to pay a termination fee to the organiser. However, the PTRs states that 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, the traveller may terminate the package before the start without paying any termination fee and is entitled to a full refund of payments made for the package".

Where a customer wishes to cancel their contract and receive a full refund, the questions to ask will be:

1. Is the coronavirus (or related issues such as movement restrictions) occurring at the place of destination or its immediate vicinity?; and
2. Will the coronavirus (or related issues such as movement restrictions) significantly affect: (a) the performance of the package, or (b) the carriage of passengers to the destination.

If the answer to either of the above questions is 'no', the customer will still be entitled to cancel their contract but can be required to pay an appropriate and justifiable termination fee to the travel provider (these termination fees should be set out in the travel providers' terms and conditions).

No guidance has been provided either within the PTRs or the related Government guidance as to what is meant by the "immediate vicinity" to the place of destination but the key issue here is also whether the event significantly affects the performance of the package.

Can a travel provider cancel a package holiday due to coronavirus?

The PTRs provide that if a travel provider is unable to provide a package holiday, or is required to make a significant change to a package holiday, in each case due to *'unavoidable and extraordinary circumstances'* they will have the following options:

1. Cancel the package holiday and pay the customer a full refund.
2. Offer the customer an alternative package of, where possible, equivalent or higher quality elements than those specified in the original contract.
3. Offer the customer an alternative package of a lower quality than that specified in the original contract together with an appropriate price reduction.

Whilst travel providers may prefer to offer an alternative package rather than a full refund, customers have the right to decline the offer of an alternative package and seek a full refund.

Can a travel provider cancel a package holiday due to coronavirus?

Whilst it may be easy to identify some package holidays which are currently going to be significantly affected by coronavirus -for example, where the destination city is currently imposing quarantine arrangements or the hotel is closed for deep cleaning – the impact of the coronavirus is rapidly developing on a global scale which makes it difficult to identify whether the holiday will be able to proceed.

News reports are making customers understandably anxious and some are seeking to cancel family holidays for May half-term and beyond. Whether it will be possible for a package to proceed will depend on how it is likely to be affected by further developments with the coronavirus. This can be difficult to assess and is likely to require travel providers to monitor the situation carefully and take account of guidance being given by the Foreign & Commonwealth Office and local Governments.

Where a customer does not want to proceed with a package holiday and the travel provider considers that the package could still go ahead without being significantly affected, the customer will be entitled to terminate their contract but will be required to forfeit their deposit or pay a termination fee.

What happens if customers are unable to travel?

One area which the law is not completely clear on what happens if a customer is unable to travel as a result of coronavirus. This could occur where:

- the customer themselves has (or suspects they have) coronavirus
- the customer has been to an area from when travel restrictions have been put in place

In these circumstances customers would hopefully have travel insurance or a 'Cancel For Any Reason' (CFAR) policy which would provide them with compensation (in a similar way that it would if they were unable to travel due to a broken leg). However, a customer could argue that the country of destination will not actually allow them to visit or the airline will not allow them to travel and that such a situation is an "unavoidable and extraordinary" circumstance which "significantly affects" the performance of the package, or the carriage of passengers, and as a result that they are entitled to cancel their contract and receive a full refund.

Do the same cancellation rights apply to contracts with hotels and other suppliers?

A key issue for the travel industry is that the cancellation rights under the PTRs do not apply to contracts with

hotels and other suppliers. This can be a problem for both customers and package travel operators.

Where a customer enters into a contract directly with a hotel or a provider of another travel service (e.g. a coach company) for a single element of a holiday, rather than booking a package, the PTRs will not apply and the customer will need to look at the terms and conditions offered by that provider to see what cancellation rights they will be entitled to. However, if the provider's terms and conditions are unfair or misleading, customers might have some protections under consumer regulations such as the Consumer Protection from Unfair Trading Regulations 2008 and the Consumer Rights Act 2015.

For package travel operators the answer will also depend on the contract between the operator and the suppliers of the hotels and other travel services. These contracts are crucial for limiting the package travel operator's potential exposure. Without suitable contracts in place, the package travel operator could find themselves needing to provide a refund to a customer under the PTRs whilst simultaneously being required to pay a hotel provider in full for an unused hotel room. In addition to looking at the standard cancellation provisions, force majeure clauses in supplier contracts could also be invoked as a result of the coronavirus so it is worth considering these when reviewing supplier contracts.

For more guidance, and further information, visit our [Coronavirus hub](#).