

Report to the Tyne and Wear Trading Standards Joint Committee

17 September 2020

Competition and Markets Authority: The Coronavirus (COVID-19) Pandemic, Consumer Contracts, Cancellation and Refunds. 30 April 2020

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Purpose of the report

1. To update the Committee on the publication by the Competition and Markets Authority (CMA) of a Policy Statement on Consumer Contracts, Cancellation and Refunds in April 2020.

Summary

2. During the pandemic and lockdown from March 2020, the CMA received a significant number of complaints from consumers that apparently businesses were not following the legislative provisions in respect of consumer contracts and the requirements for businesses to consider cancellations and refunds.
3. There are a wide range of contracts that have been affected due to the Coronavirus (COVID-19) pandemic. The following sets out the CMA's general views about how the law operates in this area, to help consumers understand their rights and to help businesses treat their customers fairly.

The position in most cases:

4. Where a contract is not performed as agreed, the CMA considers that consumer protection law will generally allow consumers to obtain a refund.
5. 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.

Limited exceptions to full refunds

6. Sometimes, a consumer will already have received some of the services they have paid for in advance. In those cases, the CMA considers that the consumer would normally be entitled to at least a refund for the services that are not provided. However, where they have already received something of value, consumers should generally be expected to pay for it and they will not usually be entitled to get all their money back.
7. In some cases, where Government public health measures prevent a business from providing a service or the consumer from receiving it, the business may be able to deduct a contribution to the costs it has already incurred in relation to the specific contract in question (where it cannot recover them elsewhere). In the CMA's view, these cases are likely to be relatively rare, however, and the costs that may be deducted from refunds will usually be limited.

Ongoing contracts

8. Where a consumer receives regular services in exchange for a regular payment as part of an ongoing contract, the CMA considers that consumer protection law:
 - will normally require the consumer to be offered a refund for any services they have already paid for but that are not provided by the business or which the consumer is not allowed to use because of Government public health measures (this may be a partial refund of the total amount the consumer has paid, to reflect the value of the services already provided);
 - will normally allow the consumer to withhold payment for services that are not provided by the business or which the consumer is not allowed to use because of Government public health measures;
 - may allow a business to require payment of a small contribution to its costs until the provision of the service is resumed, but only where the contract terms set this out clearly and fairly.

Non-refundable payments and fees

9. In the CMA's view, the above rights to a refund will usually apply even where the consumer has paid what the business says is a non-refundable deposit or advance payment.
10. The CMA also considers that businesses should not charge an admin fee (or equivalent) for processing refunds in the above circumstances.

Credits and re-booking

11. Consumers can normally be offered credits, vouchers, re-booking or re-scheduling as an alternative to a refund, but they should not be misled or pressured into doing so, and a refund should still be an option that is just as clearly and easily available. Any restrictions that apply to credits, vouchers, re-booking or re-scheduling, such as the period in which credits must be used or services re-booked, must also be fair and made clear to consumers.

Timing

12. The CMA accepts that, in the circumstances, it may take businesses longer than normal to process refunds. The timeframes for providing refunds should be made clear to consumers and refunds should still be given within a reasonable time (and, where there are statutory deadlines for payment – like those which apply to package holidays – businesses should take those into account).

Future contracts

13. Some contracts may require consumers to pay now for services they will receive in the future, after the current disruption has lifted. A business should not seek payments for a service it knows it will be unable to provide. Where the business reasonably expects to provide the service as agreed, the CMA's view is that, in general, the business can require consumers to carry on making these payments for the time being. That could be the case, for example, for some services due to be provided later in the year. Consumers' rights to refunds will depend on whether the services can be provided when the time comes.

Cancellation by consumers for other reasons

14. If a consumer cancels a contract because they no longer want the service, even though the service can still be provided as agreed, the consumer will be entitled to a refund in line with the applicable terms and conditions (on the assumption those terms are fair). The CMA has published guidance on unfair contract terms.
15. The above sets out the CMA's views on the law, but only the courts can decide what the law is and the CMA's views are not a substitute for independent legal advice.

Actions Taken

16. Since mid-April, the large majority of complaints received by the CMA have been about unfair practices in relation to cancellations and refunds. In the week to 17 May, cancellation complaints were being received at a rate of 850 per day on average. Consumers have raised concerns about firms refusing to provide refunds; introducing unnecessary complexity into the process of obtaining refunds; charging high administration or cancellation fees; and pressuring consumers into accepting vouchers instead of cash refunds.
17. Around three-quarters of cancellation complaints related to holidays and air travel. The potential harm to consumers from companies failing to respect consumers' cancellation rights is set to grow.
18. The CMA Taskforce is currently investigating whether companies are failing to comply with the law. Three sectors were initially prioritised: holiday accommodation; weddings and private events; and nursery and childcare providers. Based on the number and nature of complaints being received, package holidays has now been included in the scope of the investigation

Recommendation

19. The Committee is asked to note the information as contained within the report.

Appendix 1: <https://www.gov.uk/government/publications/cma-coronavirus-taskforce-update-21-may-2020/protecting-consumers-during-the-coronavirus-covid-19-pandemic-update-on-the-work-of-the-cmas-taskforce>

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