



## **Advice to business owners and customers re: Accommodation, Holidays & Events Cancelled Due to Coronavirus during the official lockdown (15<sup>th</sup> May 2020)**

The outbreak of Coronavirus (COVID-19) is an unprecedented and rapidly evolving challenge that has impacted upon every business sector. In Pembrokeshire, the restrictions on non-essential travel, mandatory closure of many businesses including holiday accommodation and the cancellation of events has prompted enquiries from business and consumers seeking clarification as to their rights and obligations in relation to forced cancellations.

As a result we are now offering this advice and guidance based on our understanding of current applicable legislation and available guidance. It is not an authoritative interpretation as ultimately only the courts have jurisdiction to determine the outcome of individual cases.

We are aware that there are examples of customers and businesses being flexible and working constructively to avoid the need to cancel completely; either by agreeing a revised booking date or by securing some other arrangement (i.e. deposit/monies held pending the lifting of restrictions and the re-opening of bookings). These voluntary arrangements go to show that many customers are keen to have a holiday or event to look forward to, once the current restrictions are lifted, and have in-turn helped those businesses who are struggling due to the financial impact of the current situation. Further information for some businesses on financial assistance during the crisis can be found here –

<https://www.pembrokeshire.gov.uk/newsroom/covid-19-grants-for-small-businesses>

There are however some customers who are unable to postpone to an alternative date. Standard booking terms and conditions (which must be fair) would normally apply where contracts have to be cancelled and some businesses may have included a specific term to cover such events, sometimes this may be referred to as 'force majeure'. Even where such clauses are included, it still has to be fair and certain conditions need to be met for a business to rely on it for example taking reasonable steps to mitigate/avoid the effect of the pandemic.

On 30<sup>th</sup> April 2020, the Competition and Markets Authority released an official statement and guidance on the matter with particular reference to the specific sectors including weddings, events and holiday accommodation. The guidance 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. Links to the CMA press release can be found here -

[Competition and Markets Authority Guidance re refunds press release](#)

[CMA official statement re CV19, consumer contracts, cancellation & refunds 30-4-20.](#)

In most cases the CMA considers that generally businesses should offer consumers a full refund where:

- the business cancels a contract without providing the relevant goods or services;
- services have not been provided (for example, due to Government public health measures); or
- a consumer cancels or cannot receive the services because of Covid-19.

The CMA considers that refunds should apply even if a service is described as ‘non-refundable’. However, it does envisage certain circumstances where a partial refund may be appropriate. These include scenarios where the consumer has already received some value. For example, where a consumer had enjoyed part of a two week holiday which was curtailed due to Covid-19. Also, where a business has incurred some costs, the business may be able to deduct a contribution towards such costs from the refund due to the consumer where it cannot recover the costs from elsewhere. It is conceivable that many businesses may have irrecoverable costs in respect of which they may wish to deduct a contribution from refunds. **However, businesses should ensure they have a strong case with respect to such deductions; the CMA considers that these kinds of cases are likely to be ‘rare’ and the deductions will ‘usually be limited’.**

In some cases, consumers will have statutory rights to a refund, for example under ***The Consumer Rights Act 2015***. Where such rights do not apply, the consumer may be entitled to a refund under the terms and conditions of the contract or, alternatively, where contract terms deny a refund and are unfair – under the unfair terms provisions of ***The Consumer Rights Act 2015***. Indeed, the CMA’s Unfair Terms guidance makes it clear that businesses should not expect the consumer or its insurer to bear the risk of businesses going insolvent.

***The Law Reform (Frustrated Contracts) Act 1943*** contains a statutory entitlement to a refund for any contract that has “*become impossible to perform or been otherwise frustrated*” (e.g. as a result of the current Covid-19 restrictions).

It remains open to businesses to offer consumers credit notes or vouchers as an alternative to a refund. However, the CMA makes it clear that a cash refund should still be easily available to consumers and any restrictions on the use of credits and vouchers must be fair. For example, requiring consumers to re-book their holiday within a limited timeframe could be unfair. Businesses should also avoid misleading or pressurising consumers into accepting vouchers instead of refunds, doing so could represent a criminal offence under ***The Consumer Protection from Unfair Trading Regulations 2008***.

Whilst we fully appreciate that many customers are frustrated by the difficulties in obtaining refunds, it is important to note that ultimately claims for monetary recompense would have to be brought by the customers themselves and enforced through the County Court. Judges will consider how reasonably both parties have acted and will likely take into account the CMA guidance when coming to their decision.

Hopefully however the majority of cases will be resolved between customers and accommodation providers/event organisers without needing to get to that stage.

Practical steps to help customers in resolving a cancellation issue:

- Check any terms and conditions relating to your booking. Contact the business and try to reach some form of agreement. Make sure you obtain any new agreement in writing.
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- Where you cannot reach a mutually acceptable agreement, put your complaint in writing to the business.
- If you have travel insurance, check the small print to see if your booking was covered; and consider registering a claim.
- If your booking was over £100 and you paid some or all of the amount by credit card, you may be able claim through your credit card company under Section 75 Consumer Credit Act 1974. Contact your credit card provider to register a claim
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- As a last resort, where the business continues to refuse a refund and you have no other means of getting your money back, then you may consider issuing a claim via the County court. For disputes involving higher sums, it may be worth consulting a solicitor.

Please remember, accommodation providers, holiday companies and event organisers are facing significant financial pressure at this time, but they will be very keen to re-book customers to recover business later in the season, likewise it may take time for the business to be in a financial position to provide a refund.

If you do still need further advice or information about cancelling a booking due to Covid-19 please call the Citizens Advice Consumer Service on **0808 223 1133** or **0808 2233 1144** for Welsh speakers. Anyone affected by unfair cancellation terms in the wake of COVID-19, can report them to the CMA using the [online form](#). Whilst the CMA is not able to respond directly to every complaint it receives, the information provided will help the CMA to decide which issues to address as part of this rolling programme of work. If it finds evidence that companies are failing to comply with the law, it may take appropriate enforcement action, which could include taking a firm to court if it does not address its concerns.

***Important note: The above advice relates to booking made directly to accommodation providers (or via their agents) and not package holidays (where travel, accommodation and/or excursions are sold together).***