

Finalised Guidance

Cancellations and refunds: helping consumers with rights and routes to refunds

1 April 2021

1 Summary

Background

- 1.1 The coronavirus (Covid-19) pandemic has had a significant impact on millions of consumers and businesses. Since March 2020, we have intervened to support both consumers and businesses during this period of uncertainty.
- 1.2 The coronavirus crisis has led to a large number of consumers experiencing cancellations of travel arrangements and other events, such as weddings. On 29 June 2020, we published a statement on our website outlining the potential routes available to consumers who were seeking a refund following a cancelled trip or event.
- 1.3 We said that, in the first instance, consumers should go to their retailer for a refund as this is often the quickest and easiest route. However, in some circumstances, the consumer may not be able to obtain a refund from their retailer. A consumer might then be able to make a claim with a card or insurance provider. Further detail about each of these refund routes is set out in Annex 1.
- 1.4 Following consultation, we published temporary guidance in October 2020 setting out our expectations of insurance and card providers when they are helping consumers who are trying to claim money back following a cancelled trip or event.
- 1.5 This temporary guidance is due to lapse on 2 April 2021. Given the ongoing impact of the pandemic and the ongoing uncertainty around upcoming trips and events, we consulted on extending our temporary guidance on 12 February 2021.
- 1.6 We wanted to act quickly to protect consumers in these difficult times and provide clarity to firms on the fair treatment of consumers. We therefore considered a 2-week consultation period appropriate.
- 1.7 The consultation closed on 26 February 2021 and we received 7 responses. All respondents agreed with the proposed extension, though had different views on how long it should be extended for. Further detail on the additional feedback raised is outlined in Section 2.
- 1.8 We are now publishing our final guidance (see Section 3), which will be effective from 2 April 2021 and will remain in force during the exceptional circumstances arising out of Covid-19 until varied or revoked.
- 1.9 This guidance supports our consumer protection objective and is designed to reduce consumer confusion and frustration by outlining our expectations of firms to provide more information and make the consumer journey easier. It could also help consumers to decide on the best route to claim a refund in their circumstances.

Who this guidance applies to

- 1.10 This guidance applies to insurance, credit card and debit card providers.

Next steps

- 1.11 The guidance will take effect from 2 April 2021 and remain in place during the exceptional circumstances arising out of Covid-19 until varied or revoked.
- 1.12 We will keep this guidance under review as the wider situation relating to Covid-19 develops and will consider whether we should make the guidance permanent, either in its current form or with some changes to the guidance. We will engage with stakeholders as we consider these options. Any permanent guidance will be subject to a full consultation.

2 Feedback received

General

- 2.1 We received 7 responses to the consultation from 1 firm, 4 trade bodies, and 2 consumer organisations. All respondents agreed that the temporary guidance should be extended, though had different views on how long it should be extended for.
- 2.2 Several respondents also provided feedback on other matters relating to the guidance.
- 2.3 We have set out the points raised by respondents, and our response, below.

Extending the guidance

Feedback received

- 2.4 All respondents agreed that we should extend our temporary guidance. *Some* respondents said the guidance should be permanent. Others felt that the guidance should be extended for 6 months and then reviewed.

Our response

- 2.5 We have chosen to continue with our proposal that the guidance will apply during the exceptional circumstances arising out of covid-19 until varied or revoked. This will ensure that consumers will continue to be protected during the ongoing uncertainty. We will review this at an appropriate time.

Other feedback and questions raised in responses

Insurance providers knowledge of section 75 eligibility

Feedback received

- 2.6 In our temporary guidance, we gave examples of how an insurance firm might minimise the possibility that they refer consumers to card providers where this would not be in the consumer's interest. One of the examples given was for providers to

ask questions to assess if the consumer is unlikely to have the basis for a claim under Section 75 (s.75) of the Consumer Credit Act (CCA).

- 2.7 One respondent raised concerns that insurance providers would not know whether a consumer is likely to be eligible for a s.75 claim.

Our response

- 2.8 This concern was raised in the consultation last year, and as a result we amended the guidance to make clear that we do not expect insurance providers to assess a consumer's eligibility to make a s.75 claim. We do however think it is reasonable for a firm to consider if a claim obviously falls outside the scope of a s.75 claim.
- 2.9 Following the consultation last year, we included example questions in our guidance that an insurance provider could ask to identify whether the consumer is unlikely to have a basis for a claim under s.75. Where the consumer clearly has no basis for a s.75 claim, the insurer should not refer them to the credit card provider and should consider the insurance claim in the usual way. This will avoid wasting the consumer's time.
- 2.10 Where the consumer may have a s.75 claim, and is being referred to the card provider, the insurance provider should take reasonable steps to ensure they have sufficient information to understand why they are being referred. We would not expect insurance providers to express a view on the likely success of any s.75 claim, to avoid giving regulated advice.

Questions included in the guidance

Feedback received

- 2.11 As outlined in paragraph 2.9, our temporary guidance included some example questions setting out one way an insurance provider could consider whether its customer is unlikely to have a basis for a claim under s.75.
- 2.12 One respondent suggested that the questions could be made available to consumers as a quick reference, standalone PDF.

Our response

- 2.13 We have spoken to the Money and Pensions Service (MaPS) which intends to add these questions to its webpage to assist consumers in understanding their options. This does not change our expectations of firms, as outlined in the guidance.

The order of claims

Feedback received

- 2.14 One respondent asked in what order consumers should speak to their travel provider, insurer or card provider.

Our response

- 2.15 Consumers' eligibility for different types of claim will depend on the circumstances in which they bought the goods or services, whether they paid using a debit or credit card and/or the terms of their insurance policy, if they have one. Depending on consumers' circumstances, there may also be reasons why certain routes to claim a refund may have better outcomes.

- 2.16 Our guidance seeks to ensure that where insurance firms ask consumers to explore a s.75 claim, the insurer should take reasonable steps to ensure the consumer understands why they have been referred. This can include, for example, providing information about the possible benefits of claiming from their credit card provider compared to their policy.
- 2.17 In most circumstances, it is quickest and easiest for consumers to go to the retailer first for a refund. For a holiday or trip, this may include the hotel, travel agent or airline, or for an event this may be the events company or venue.

Working with other regulators to ensure consumer protection

Feedback received

- 2.18 One respondent said that we should work with the Competition and Markets Authority (CMA) and the Civil Aviation Authority (CAA) to ensure that there is a cross-industry response to ensure protection for consumers in varying circumstances.

Our response

- 2.19 We have engaged with other regulators on relevant policy areas, including the recent CMA statement on refunds and travel vouchers, and we will continue to work closely with these regulators to ensure our policies complement each other.

Short consultation period

Feedback received

- 2.20 One respondent raised dissatisfaction with the short consultation period of this consultation.

Our response

- 2.21 We appreciate that it can be difficult for stakeholders to review consultations at speed, however we have to set this in the context of us needing to act quickly to deal with the fast-paced changes arising from the pandemic. Our proposals did not involve a change to the content of the guidance. We therefore considered this consultation period appropriate for the content that stakeholders had to review.

3 Guidance for firms when dealing with consumers looking to request a refund following a cancellation of services

- 3.1 This guidance is for insurance providers and card providers and builds on the FCA Principles for Business: Principles 1 (Integrity), 2 (Skill, care and diligence), 6 (Customers interests), 7 (Communications with clients) and ICOBS 8.1 as applicable.
- 3.2 The guidance aims to protect consumers who may suffer inconvenience and frustration when trying to get a refund for cancelled travel arrangements or events. This may be due to complexity and delays with pay-outs, particularly where consumers are unclear as to whether they can, or should, make a claim against their credit card provider under section 75 of the Consumer Credit Act 1974. Consumers may feel that they have been passed between different regulated firms without understanding why, and where this might not be in their best interests.
- 3.3 In complying with this guidance, insurance firms should be careful that they do not stray into the regulated activity of advising on a section 75 claim, where they do not have the necessary permissions. The guidance has therefore been designed to minimise the risk that this could happen.
- 3.4 This guidance comes into force on 2 April 2021 and remains in force during the exceptional circumstances arising out of Covid-19 until varied or revoked.

Insurance firms should:

- Treat their customers fairly and consider what is in the consumer's interest.
- Some insurers will require policyholders making a claim to demonstrate that they have suffered, or have taken reasonable steps to mitigate, a financial loss. This could include insurers asking customers to first seek refunds from other sources where there is a liability to return funds, such as from a travel provider or under a section 75 claim from a card provider, before considering the claim. Some policies may make specific provisions for what a policyholder will need to do. We consider that the steps required of policyholders should not be unreasonable. Insurance providers should take reasonable steps to minimise the possibility that they refer their customers to card providers where this would not be in the consumer's interest (i.e. when they are unlikely to have a valid claim with their card provider).
 - This could include asking questions to clarify whether there is no basis for a claim against their credit card provider under section 75 of the Consumer Credit Act 1974. Where a consumer clearly does not have the basis for a claim under section 75, insurers should not ask a customer to pursue a claim with a credit card provider. Questions could include:

- Did you use a credit card to buy the goods/services? If you bought the goods or services with a debit card, charge card or prepaid card, it will not be covered by section 75.
- Was the cash price below £100? If the cash price for a single item or service you make a claim on is under £100, it will not be covered by section 75.
- Is the product or service you are claiming for directly affected by the coronavirus (Covid-19) pandemic? For example, if you bought flights and hotels separately, and the flight has been cancelled (stopping you from getting to the hotel), then a section 75 claim may be possible for the flight. But if the hotel booking is still available, even if you would have had trouble travelling to it, then you are unlikely to be covered by section 75 for the cost of the hotel.
- Did you use your credit card to buy the goods/services directly with the supplier? If you did not pay the supplier of the goods or services directly using your credit card, but instead paid a third party such as a travel comparison website, PayPal or Amazon Marketplace, then you may not have section 75 protection.
- Did you book the services using a voucher given by your travel provider from, for instance, an earlier cancelled booking? If you paid using a voucher, you are unlikely to have section 75 protection for that new trip.
- Insurers may also consider entering into arrangements with card providers to reduce the likelihood of consumers being unfairly passed among regulated firms, particularly where the insurer and the card provider are part of the same group.
- Where a firm refers a consumer to a credit card provider, it should take reasonable steps to ensure consumers have sufficient information to understand why they are being referred, which can include:
 - Outlining information on what section 75 covers
 - Explaining why they are asking the consumer to go to their credit card provider first. Where the policy requires it, we would expect insurers to tell customers that they need to explore other avenues such as a section 75 claim first before the insurer will consider their insurance claim.
 - Giving the consumer information to ensure they understand the different potential routes to claim available to them, such as a claim against a card/alternate provider or their insurance policy. Steps can include:
 - Providing information about the benefits of claiming with their credit card provider compared to their policy. For example, the consumer may be able to claim the full amount they paid including any consequential losses and

expenses without paying an excess. Or they may be able to recoup losses for all the members of the party on the booking (if booked on the same credit card), some of whom may not have insurance.

- Highlighting case-study examples to help consumers to decide what to do.

3.5 Any potential claim on an insurance policy will depend on the terms of the policy. However, where an insurance provider requires policyholders to demonstrate or take reasonable steps to mitigate a financial loss under the terms of the policy, consumers should not have to go to unreasonable lengths to do this. For example, where a travel provider is resisting a refund, and the consumer is unlikely to have a valid section 75 claim, a consumer should not be expected to take more than reasonable steps to pursue the refund. What is reasonable will depend on the circumstances in each case.

3.6 For example, a consumer might be seeking a refund after a hotel has cancelled their booking. We think it could be reasonable to expect a consumer to have pursued a claim up to a point where it appears from the correspondence (including the absence of replies) that a refund is unlikely to be forthcoming, or there is insufficient indication of when it may be expected so as to give rise to sufficient uncertainty as to whether there may be a refund. This will depend on the facts and circumstances – but where customer can demonstrate that they have made several unsuccessful attempts to obtain refund from the hotel, it might be unreasonable to expect them to do more. We would generally view it as unreasonable to expect that a consumer would need to go to court to recover their money.

Credit and debit card providers

3.7 We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay.

3.8 Where a credit or debit card provider declines a consumer's section 75 or chargeback claim, they should explain the reasons for this clearly and fairly and explain any further options that the customer might have. This might include checking to see if they are covered under a policy of travel insurance, including policies held as part of a packaged bank account.

4 Annex 1: Different routes for a refund

- 4.1 In most circumstances, it is quickest and easiest for consumers to go to the retailer first for a refund. For a holiday or trip, this may include the hotel, travel agent or airline, or for an event this may be the events company or venue.
- 4.2 There are other possible routes for consumers to claim their money back. This could be through a claim from a credit or debit card provider (under section 75 of the Consumer Credit Act 1974 (s.75) or under 'chargeback' arrangements), or a travel insurance claim. Each of these routes has limitations and different potential benefits to a consumer.

Chargeback

- 4.3 If the customer has paid for the cancelled services using a debit or credit card, then they might be able to make a 'chargeback' claim. Under this arrangement a debit or credit card provider reclaims the money back from the travel provider, under specific circumstances set out in the card scheme rules (Mastercard, Visa and Amex).
- 4.4 Chargeback is not a statutory right. The card issuer and the card provider's bank will normally work together to consider the refund for a consumer. Consumers normally have 120 days to raise a chargeback claim with their card issuer from the expected delivery date of the goods or services not being provided.
- 4.5 With a chargeback claim, a consumer can only reclaim the amount paid on the debit or credit card, and not any other consequential losses.

Section 75 claim

- 4.6 If a consumer paid with a credit card, and the cost of the goods or services was between £100 and £30,000, they may be eligible for a s.75 claim. This is a statutory right under the Consumer Credit Act 1974.
- 4.7 A s.75 claim may apply if the retailer has broken the terms of their agreement, or is not providing the goods or service as promised. Consumers must raise the claim within 6 years of buying the goods or services or, if they didn't receive them, within 6 years of when they were due to receive them.
- 4.8 Under a s.75 claim, a consumer may be eligible to claim for certain consequential losses, though not all consequential losses are covered.

Travel insurance claim

- 4.9 All travel insurance policies are different. But most include cover for customers where they have suffered a financial loss after their travel arrangements have been cancelled.
- 4.10 Whether a customer can make a claim under an insurance policy depends on the terms of the policy. This can include terms that a consumer must act to minimise any losses or recover losses from other sources before making an insurance claim.
- 4.11 An insurance claim might require the consumer to pay an excess fee, it might be subject to limits and the policy will only cover the named policyholders.