

## Finalised guidance

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

October 2020

## 1 Summary

- 1.1 On 31 July 2020, we consulted on temporary guidance outlining our expectations for insurance and card providers when helping consumers who are trying to claim money back following a cancelled trip or event.
- 1.2 The consultation closed on 13 August 2020 and we received 17 responses. None of the respondents disagreed with the proposals and several noted the need for guidance in this area. Following the feedback received, we propose to make some additions to the final guidance, which are outlined in this paper. These include amendments to:
  - give example questions that insurance firms could ask consumers to clarify where they have no prospect of making a section 75 claim
  - clarify our expectations for (debit and credit) card providers
  - confirm that our guidance does not provide a set route for consumers to get a refund
  - provide more detail on when it might be 'unreasonable' for insurers to not pay out when the consumer has attempted to seek a refund from other sources

## Different Routes for a refund

---

- 1.3 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.
- 1.4 For packaged holidays, if the travel provider (eg a travel agent) doesn't provide the refund within 14 days of cancellation, consumers should contact either ATOL, for a flight package holiday or ABTA (or a similar guarantee scheme) who represent travel agents and tour operators in the UK. Not all travel agents and tour operators are members of ABTA or ATOL. However, in many cases, travel is protected under these industry schemes and consumers may be eligible for a refund under the Package Travel and Linked Travel Arrangements Regulations 2018.
- 1.5 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 'chargeback' arrangements or under section 75 of the Consumer Credit Act 1974 (s.75), or a travel insurance claim. Each of these routes has limitations and different potential benefits to a consumer, which we summarise below.

### Chargeback

- 1.6 If the consumer 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).
- 1.7 Chargeback is not a statutory right. The card issuer and the card provider's bank will normally work together to look into 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.
- 1.8 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

- 1.9 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.
- 1.10 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.
- 1.11 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

- 1.12 All travel insurance policies are different. But most include cover for consumers where they have suffered a financial loss after their travel arrangements have been cancelled.
- 1.13 Whether a consumer 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.
- 1.14 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.

### Who this guidance applies to

---

- 1.15 This guidance supports our consumer protection objective and is designed to reduce consumer confusion and frustration by outlining our expectations of firms in providing more information and making the consumer journey easier. It could also help consumers to decide on the best route to claim a refund in their circumstances.
- 1.16 This guidance applies to insurance providers, credit card providers and debit card providers. We will work with the Money and Pensions Service (MaPS) to give consumers further information in addition to the statement we published on 29 June 2020.

### Next steps

---

- 1.17 The guidance will be effective for 6 months from 2 October 2020 to 2 April 2021. Before the end of this period, we will evaluate and consider whether we should make the guidance permanent. We will speak further with stakeholders as part of this process.

## 2 Feedback received

- 2.1 We received 17 responses to the consultation from firms, trade bodies, and consumer organisations.
- 2.2 14 of the respondents agreed that there was a need for guidance to reduce consumer confusion. No respondents disagreed and 3 respondents did not comment on the overall policy and need for it.
- 2.3 Respondents also raised detailed points that we set out below, along with our response to the feedback.

### Extending the guidance to include card providers

---

#### Feedback received

- 2.4 Some respondents argued that the guidance should also apply to card providers, and not just insurance providers. They felt this would ensure that the consumer journey was simplified no matter which provider they went to first.
- 2.5 Some respondents noted the need for consumer choice and that consumers should be allowed to make the choice that they think would be best for them.

#### Our response

- 2.6 Our draft guidance already set expectations for both insurance firms and card providers. However, the guidance sets different expectations for each, as the situation in each sector is different. Most notably, we have not seen evidence of card providers asking consumers to make an insurance claim before they agree to deal with a s.75 claim. If we find evidence that this is taking place in the credit card industry, we will consider updating the guidance when we evaluate and consider whether we should make the guidance permanent.
- 2.7 We remind firms that credit or debit card providers should not decline a consumer's claim on the basis that an insurance policy is in place and should take steps not to refer their consumers to insurers, where this would not be in the consumer's interest.
- 2.8 The guidance sets expectations for firms when dealing with consumers who are trying to claim money back following a cancelled trip or event. The aim is to ensure that firms treat these consumers fairly and minimise the frustration and inconvenience to these consumers when making such claims. The guidance is not designed to set out the order in which consumers should make claims for redress. This is determined by the consumer's circumstances, preferences and legal relationships with the parties involved.

In this respect, the choices available to consumers remain unchanged. Information on the different routes to refunds will be included on the MaPS website.

### Responses about the order of claims

---

#### Feedback received

- 2.9 The majority of respondents agreed that there was no set route to claiming a refund that works for all consumers, as the eligibility and potential benefits from each route depend on a consumer's individual circumstances. However, one respondent felt strongly that an insurance claim should always come before a card claim.
- 2.10 Some respondents noted that our guidance suggested that a claim against a card provider should always come before an insurance claim. Some insurers pay claims without asking the consumer to check if they have a s.75 claim. There was concern that these insurers would stop taking this approach and start asking consumers to explore a s.75 claim, which might not be a good outcome for consumers.

#### Our response

- 2.11 Where insurance providers are currently paying claims, they should continue to do so as the guidance does not set out a particular route to make a claim. We are working with MaPS to help increase consumer awareness and understanding of the different potential routes to claim a refund.
- 2.12 Consumers' eligibility for different types of claim will depend on the circumstances in which they bought the goods or services, and/or the terms of their insurance policy, if they have one.
- 2.13 Depending on consumers' circumstances, there may also be reasons why certain routes to claim a refund may have better outcomes. The 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.

### Example questions insurance providers can ask consumers

---

#### Feedback received

- 2.14 In the proposed guidance (at paragraph 3.4), 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 s.75 claim. Respondents were concerned that we were asking insurance providers to assess and advise consumers on their eligibility for a s.75 claim. They argued that insurance providers giving advice on a s.75 claim would be outside their area of expertise

and some said that this could involve giving regulated claims management advice for which they do not have the necessary permissions.

### **Our response**

- 2.15 We acknowledge this concern. We have amended the guidance to minimise the risk that insurers without the necessary permissions offer regulated claims management advice. We do not expect insurance firms to assess a consumer's eligibility to make a s.75 claim but it might be reasonable for a firm to consider if a claim obviously falls outside the scope of a s.75 claim.
- 2.16 We have included example questions in our guidance to show a possible way of considering whether the consumer is unlikely to have a basis for a claim under s.75. Where the consumer has clearly 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. 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 expect that insurers would not express a view on the likely success of any s.75 claim, to avoid giving regulated advice.

## **What is reasonable to expect of consumers in attempting to recover funds from retailer/service providers?**

---

### **Feedback received**

- 2.17 In the guidance consultation, we proposed that insurance providers should not expect policyholders to go to unreasonable lengths to demonstrate or mitigate financial loss. Several respondents disagreed with this. They felt that we shouldn't expect insurance providers to cover claims where other providers have legal liability for these claims. Respondents also asked us to set out what we consider to be reasonable and unreasonable in this context.

### **Our response**

- 2.18 Where an insurance provider requires policyholders to demonstrate or reasonably mitigate a financial loss under the terms of the policy, policyholders should not have to go to unreasonable lengths to do this.
- 2.19 Our expectation is that insurance firms should not place unreasonable expectations on policyholders when asking them to prove they have tried to obtain a refund from another source. What is reasonable will depend on the circumstances, and we expect firms to consider this in line with their obligations to treat their customers fairly. It is not appropriate for the FCA to be prescriptive about what is reasonable in these circumstances. We have included an example in the guidance to help illustrate our expectations. The example outlines a situation where the consumer has had hotel accommodation cancelled and they have tried to obtain a refund. We would generally expect the insurer not to require a consumer to go to court to recover their funds. A

policyholder having pursued the claim by e-mail and telephone may, depending on the particular circumstances, be viewed as reasonable.

### Arrangements between card and insurance providers

---

#### Feedback

- 2.20 Our proposed guidance indicated that firms could consider arrangements between card and insurance providers to minimise the risk of passing consumers between regulated firms. A few respondents said that this could be lengthy and complex, placing unnecessary burdens on firms.

#### Our response

- 2.21 The guidance outlines possible ways that providers could minimise the risk of referring consumers to another provider when this is not in the consumer's best interest. However, none of these steps are mandatory and providers should consider the best way of meeting our expectations under this guidance.
- 2.22 We remain of the view that it could be beneficial to consumers for firms to come to arrangements that minimise the risk of passing consumers between regulated firms. For example, if the card provider and insurance provider are part of the same group. However, we recognise that this might be a longer-term project for many firms.

### Request for further information on chargeback for consumers

---

#### Feedback received

- 2.23 A few respondents requested that the guidance provide further detail on chargeback claims and when this option would be beneficial for a consumer.

#### Our response

- 2.24 On 29 June 2020, we published a statement for consumers which outlines detail on chargeback, s.75, and travel insurance claims. We are working with MaPS to improve the provision of information for consumers to help them understand the different options available to them.

### Temporary nature of the guidance

---

#### Feedback received

- 2.25 Feedback was divided on the temporary nature of the guidance. While the majority of respondents understood the need for this emergency guidance for Covid-19, several noted that large disruptions to the travel industry are becoming more common (for

example, with the volcanic ash cloud of 2011, the Gatwick drone incident, and large travel firms collapsing) and so permanent guidance in this area would be beneficial.

### **Our response**

- 2.26 While we recognise these longer-term concerns, this guidance is intended to address immediate harm due to Covid-19. We will review this guidance at the end of 6 months where we will evaluate and consider whether we should make the guidance permanent. We will speak further with stakeholders as part of this process.

# Annex 1

## 1 Temporary guidance for firms when dealing with consumers looking to request a refund following a cancellation of services

- 1.1 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.
- 1.2 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.
- 1.3 In complying with this guidance, insurance firms should be careful that they do not stray into the regulated activity of advising on or identifying a s.75 claim, where they do not have the necessary permissions. The guidance has therefore been designed to minimise the risk that this could happen.
- 1.4 This guidance will be effective for 6 months from the 2 October 2020 to 2 April 2021. We will consider whether it will be made permanent from then on.
- 1.5 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 consumers 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 consumers 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 consumer to pursue a claim with a credit card provider. Questions could include:
  - Did you use a credit card to buy the goods/services? Section 75 does not include cases where the goods or services were bought with a debit card, charge card or prepaid card.
  - Was the cash price below £100? Section 75 does not cover cases where the cash price for a single item or service is under £100.
  - Is the product or service you are claiming for directly affected by the coronavirus (Covid-19) pandemic? For example, if flights and hotels are purchased separately, and the flight has been cancelled (stopping a consumer from getting to the hotel), then a section 75 may possibly cover the flight. But section 75 is unlikely to cover cases where the hotel booking is still available, even if the consumer would have had trouble travelling to it.
  - Did you use your credit card to buy the goods/services directly with the supplier? Section 75 may not cover cases where the goods or services are paid for via a third party such as a travel comparison website, PayPal or Amazon Marketplace, rather than directly using a credit card.
  - Did you book the services using a voucher given by your travel provider from, for instance, an earlier cancelled booking? Section 75 is unlikely to cover cases where the booking was paid for with a voucher.
- 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 consumers 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.

1.6 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.

1.7 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 a consumer 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**

1.8 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.

1.9 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 consumer 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.

## Annex 2 - Abbreviations used in this paper

<b>FCA</b>	Financial Conduct Authority
<b>MaPS</b>	Money and Pensions Service
<b>S.75</b>	Section 75 of the Consumer Credit Act 1974