

# Guidance consultation

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

February 2021

### 1 Introduction

#### Summary

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- 1.1 Since the outbreak of the coronavirus pandemic (Covid-19), there has been an unprecedented number of trips, holidays, and other events cancelled. In most circumstances, it is quickest and easiest for consumers to go to the retailer for a refund in the first instance. 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.
- 1.2 In some circumstances, the consumer may not be able to get a refund from the retailer (or any relevant guarantee scheme), but they might be able to make a claim with their credit or debit card provider or their travel insurer.
- 1.3 On 2 October 2020, we published temporary guidance setting out our expectations for insurance providers and card providers to reduce consumer confusion and frustration by outlining our expectations of firms in providing more information and making the consumer journey easier. The guidance is effective until 2 April 2021.
- 1.4 With the ongoing uncertainty around the impact of Covid-19, and the potential for consumers to continue to be impacted by cancellations in the coming months, we are proposing that this guidance should remain in force during the exceptional circumstances arising out of Covid-19 until varied or revoked. We will keep the guidance under review.

## Wider context

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- 1.5 When a trip or event has been cancelled it can often be difficult for a consumer to identify the best route to obtaining a refund. This is particularly the case when a customer is faced with a choice between making a section 75 claim or an insurance claim.
- 1.6 If a consumer is eligible for a section 75 claim with their credit card provider, this can often lead to a better outcome for the consumer, relative to an insurance claim, as insurance policies often have an excess and claim limits. However, there is potential for consumers to be inconvenienced and frustrated if their insurance provider asks them to check with their card provider before making an insurance claim, without explaining why they should do this and how it might lead to a better outcome. Further, a section 75 claim against a card provider might not always be possible.

## Consumer experience and potential harm

- 1.7 Our previous temporary guidance was introduced to address consumers' experiences of inconvenience and frustration, due to:
- Complexity and delays in getting pay-outs from both card providers and insurance providers.
  - Some insurance providers not explaining adequately to consumers why they are being asked to contact their card provider before making an insurance claim, and the possible benefits of this. This creates a risk of consumers feeling confused and treated unfairly, even though the proposed route might deliver a better outcome.
  - Insurance providers asking consumers to speak to their card provider when they are not eligible for a section 75 claim and will only be sent back to their insurance provider.

## Outcomes we are seeking

- 1.8 The guidance continues to aim to:
- help consumers identify their options to claim for any cancelled travel or events as quickly and easily as possible, from the provider that is likely to produce the best possible outcome for them
  - reduce the risk of consumers being passed between firms, where this is not in the consumer's interest
  - reduce potential inconvenience and frustration for consumers who are struggling to claim for cancelled travel arrangements or events
  - increase consumer understanding of the benefits of the different options available to them

- 1.9 This guidance sets out what we expect from insurance providers and card providers to help consumers when they are claiming for a cancelled trip or event. This guidance applies to any situation where an insurance provider refers a consumer to a card provider for a claim. Most notably we have seen this with travel insurance, but the guidance also applies to other insurance policies such as event or wedding cancellation cover.
- 1.10 In this guidance, when we refer to a claim against a card provider, this may refer to a chargeback claim or a claim covered by section 75 of the Consumer Credit Act (a 'section 75 claim'), and we expect card providers to help consumers with the type of claim that is best for them.
- 1.11 As well as this guidance, the Money and Pensions Service (MaPS) have updated information on their website<sup>1</sup> to increase awareness among consumers of the options available to them.
- 1.12 This guidance was introduced in October 2020, for a temporary period of 6 months expiring on 2 April 2021. We are consulting on a proposed extension of the temporary guidance that would take effect from 2 April 2021 and remain in place during the exceptional circumstances arising out of Covid-19 until varied or revoked, as set out below.

### Who this applies to

- 1.13 This guidance is relevant to:
- insurance providers
  - credit card providers
  - debit card providers
  - consumer organisations

### Next steps

- 1.14 We are asking for comments on this Guidance Consultation (GC) by 26 February 2021. Stakeholders can respond by email to: [cancellationsandrefunds@fca.org.uk](mailto:cancellationsandrefunds@fca.org.uk)
- 1.15 We will consider feedback and publish Final Guidance, depending on the responses to this consultation.

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<sup>1</sup> <https://www.moneyadvice.service.org.uk/en/articles/coronavirus-and-travel-insurance>

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

- 2.1 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.
- 2.2 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.
- 2.3 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.
- 2.4 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.
- 2.5 **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 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.

- 2.6 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.
- 2.7 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 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**

- 2.8 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.
- 2.9 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 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.

**Q1: Do you agree with our proposal to extend the guidance to remain in force during the exceptional circumstances arising out of Covid-19 until revoked or amended?**

## Annex 1- Questions in this paper

**Q1: Do you agree with our proposal to extend the guidance to remain in force during the exceptional circumstances arising out of Covid-19 until revoked or amended?**