



Booking and Deposits affected by Covid-19

The Covid-19 pandemic has created unparalleled challenges to business; and the issues of trying to trade safely and fairly continue to change, as the country moves forward into the recovery phase.

Businesses in the Service sector, particularly those providing holiday accommodation, face additional dilemmas, not just in terms of safe operation, but also tackling the uncertainty created by advance bookings and deposits.

Following further recent guidance from the Competition and Markets Authority, we have updated our own advice to reflect their opinion and to cover some of the specific issues surrounding local lockdowns; and how these might affect deposits and pre-payments. A number of scenarios have been set out below to answer some of the most common questions. The guidance is provided to assist businesses in dealing with their customers fairly and reasonably. The advice is not legally binding, and it is important to note that only the courts can give a definitive interpretation of the law, with each case depending on its own particular facts.

For reference, the latest version of the CMA guidance can be found here:

<https://www.gov.uk/government/publications/cma-to-investigate-concerns-about-cancellation-policies-during-the-coronavirus-covid-19-pandemic/the-coronavirus-covid-19-pandemic-consumer-contracts-cancellation-and-refunds>

National Lockdown (essential travel only, business closures in place)

Bookings and reservations falling on dates within a lockdown period, would constitute a 'frustrated contract' for those businesses which are legally required to close. In this case the law provides the consumer with the right to receive a refund from the business. The law may allow for a small sum to be retained by the business to cover the direct administration of a booking. However, it is the CMA's view that such an amount would be negligible in most cases.

VERY HIGH - Level 3 Restrictions for the Customer (guidance against non-essential travel)

The CMA have advised that this is unlikely to result in a frustrated contract, as there is no legal barrier to the customer travelling to fulfil the booking.

If a customer decides to cancel, then there is no automatic right to a refund. However, we would urge businesses, where possible, to be understanding and do what they can to either refund, offer a voucher, or re-book to an amended date; so as not to encourage travel from these areas.



If the business feels that they want to cancel the booking, then they will be required to refund. In some cases they may also be liable for any consequential losses incurred. These losses may include pre-booked travel or payments for associated events/activities that the customer has paid for.

VERY HIGH - Level 3 Restriction for the Business (advice against overnight stays in the area)

If the business is still legally able to operate, those customers with bookings or reservations would be entitled to a refund if the business decides to cancel or close. Where a business is required to close due to local regulations, this would be considered a frustrated contract and the business would be required to provide a refund or negotiate another acceptable alternative.

If a customer expresses concern over travelling to the level 3 area to fulfil a booking to a venue that can remain open, we would urge that business to consider allowing them to amend or cancel to avoid unnecessary transmission.

HIGH / MEDIUM RISK - Level 2, Level 1

If both the business and customer are in these areas, then liability for any cancellation will be down to the party that cancels, with any existing terms and conditions applying.

Members of the Customer's Party are Isolating

Where a customer cancels because they are, or member of their party is, isolating at the time the contract is intended to be fulfilled, it is strongly advised that you accept their cancellation and provide a full refund. It may be reasonable to seek some proof from the customer of this status.

In the CMA's latest guidance, they take the view that isolating would be included in health protection measures – and therefore the contract would qualify as being 'frustrated'.

Customer Cancels for Some Other Reason

A customer that cancels a booking simply because they choose not to attend, are not necessarily entitled to a full refund. In some limited circumstances, particularly where they have paid a large deposit upfront, the customer may be able to claim some of this money back, if they believe the business can mitigate its loss - perhaps by re-booking to another party.

If this is something you are concerned about, you may want to seek further advice. The specific terms and conditions, the nature of the service and the timing of the cancellation may all play a role in determining the level of any refund due in this situation.

Customer Cancels Due to Certain Facilities or Activities No Longer Being Available



Business Regulatory Support

In certain circumstances a customer may be entitled to cancel a booking or receive a reduction in price, where a specific facility, activity or event can no longer be provided by the business, due to compliance with hygiene or social distancing requirements. The customer would need to show that the element of the contract was fundamental to their booking. Evidence of this may be contained in any emails or correspondence made at the time of the booking.

Typical examples might include:

- Swimming pools, gyms, spas
- Live entertainment, festivals, or concerts
- Thrill rides or specific attractions
- Archery, bowling or similar sporting activities

When taking new bookings, it is important to communicate any significant changes to advertised facilities or activities to the customer. Many businesses will also have terms which state that some facilities may be withdrawn without prior notice. These terms may help in covering some of these scenarios, but each case may have to be taken on its merits.

Summary

Wherever possible businesses and consumers should try and be flexible and understanding, with an aim of finding a solution that avoids protracted legal disputes. The law in this area can be particularly complex, particularly when taking into account individual terms and conditions.

If you would like further advice or support, you can contact our Business Hub on **0300 1234 212**.