

It is nonetheless important to note that political pressure is just as important as writing letters to travel companies. The Competition & Markets Authority (CMA) clearly didn't want to investigate the detriment being caused to Consumers by deciding not to investigate Package Holidays. Public and I think, Public pressure on Politicians, has caused them to rethink that strategy and they have now relented and are now including an investigation into Package Holidays and CRN's (<https://www.theguardian.com/business/2020/may/21/uk-competition-watchdog-investigating-holiday-firms-refusing-refunds-airlines-complaints-covid-19>).

As is the nature of UK politics, time passes slowly. What we need from the CMA is an urgent time-limited inquiry that:

1. Recognises that despite Brexit, we are obligated under the Withdrawal Agreement, to continue with EU Legislation and implement and enforce it accordingly (**hence my suggested letter to the European Commission** who technically could enquire and ultimately institute enforcement proceedings). There is a precedence for this through an action being commenced by the European Union against the UK for their failures in another unassociated area;
2. The CMA has received evidence from Consumers & Politicians (my own report has contributed to that dialogue) and they should therefore assign an urgent task-force to examine the range of documents being offered by Consumers and act quickly to challenge the unilateral actions being taken by the Travel Industry;
3. Finally, the CMA should tackle the thorny issue of what is deemed to be a "reasonable" period for the delivery of the refund. I have suggested 45 days from the date of cancellation - the Travel Industry are way off the mark in terms of how they are defining this period!
4. If you haven't sent a letter to the CMA, with your evidence, then I would urge you to do so.

A separate but valid point is that through all this, is the UK's Department for Business Energy & Industrial Strategy (BEIS) commentary or lack of commentary on all of this; I have not been able to detect any response or commentary on this important issue (<https://www.gov.uk/government/organisations/department-for-business-energy-and-industrial-strategy>). This is important, because they are the 'gatekeepers' on the Package Travel Regulations and will have added responsibilities under the Brexit Withdrawal Agreement.

BEIS were involved in all the consultations surrounding the new Package Travel Directive and implementation of that Law into UK Law. They have also designed guidance notes on the Regulations for the Travel Industry. The Minister responsible for Consumers & Competition is Mr Paul Scully MP; he is based at BEIS. I cannot detect any public comment he has made on this issue.

I have checked the Select Committee for BEIS and to date, they have not instituted any Public Hearing into the role of BEIS and the operation of Consumers Laws relating to Holidays (<https://www.parliament.uk/business/committees/committees-a-z/commons-select/business-innovation-and-skills/>)

Another important political personality is found in the Department for Digital, Culture, Media & Sport (DCMS) (<https://www.gov.uk/government/organisations/department-for-digital-culture-media-sport>). The Tourism Minister, Mr Nigel Huddleston MP has recently commented on the affect on domestic Tourism and at a recent remote G20 conference, he highlighted the importance of outbound tourism around the world. I have not detected any

other commentary on the present crisis nor the operation of outbound tourism and Consumer Rights.

Clearly these two Ministers should be at the forefront publicly, to bring about a speedy resolution for all; I would encourage Consumers to write to these parties as part of their strategy to secure their refunds early.

I shall refer to your first e mail and make the following comments based on their response to you:

1. They refer to the impact on their business model and this is something that you can only note; you as a Consumer are not responsible for how they operate or manage their business, even in a crisis;
 - **I would simply observe, that within their Ts&Cs, they make no mention of ‘force majeure’ or ‘acts of god’. If they did, then set out in the Ts&Cs would be a strategy on how to deal with such matters which would place both parties back in their original positions, if the contract could not be delivered. The only reference they make is to ‘Unavoidable & Extraordinary Circumstances’, which as you know comes from the Package Travel Directive and the Package Travel Directive; they will also be aware of Preamble 31 in the Directive that provides examples of what that phrase means, one of which is an outbreak of illness at a destination. They are therefore appearing to solely rely on the provisions of the Regulations & Directive to deal with a Force Majeure situation. Of course, there is an additional factor in that the principles of Frustration of Contract is valid (used where there is no apparent ‘force majeure’ clause) and of course impossibility of contract. With regards to Frustration of Contract, this is given legal force by the Law Reform (Frustrated Contracts) Act 1943 (<http://www.legislation.gov.uk/ukpga/Geo6/6-7/40/section/1>). In summary, they appear to be relying solely on the provisions of the Regulation & the Directive for ‘force majeure’ scenarios and they have set out clearly that you will get a refund, without any delays other than that allowed by law. You could also argue that in the absence of a ‘force majeure’ clause, the contract has also been frustrated and adds to their obligations in contract and under Consumer Law;**
2. They then set out a partial explanation of the Package Travel Regulations and the commentary of the European Commission on 20/3/20; here they point out that the Commission ‘encourages’ Consumers to accept CRN’s in lieu of an immediate refund;
 - **This only tells part of the story; they are being selective in their response to you. It also demonstrates my earlier observations of our duties under the Withdrawal Agreement and how we should implement EU Law until 31/12/20. In my document “Package Holiday 1”, I deal with all aspects of EU Law and bring that commentary up to date, that being the European Commission ‘Recommendations’ on 19/5/20! Within the recommendations, they certainly ‘encourage’ but they make clear that Consumers must have a ‘choice’ and CRN’s can be used or operate where it is ‘subject to the passenger’s or travellers’s voluntary acceptance’. That seems pretty clear to me: they can offer and you can choose to either accept or reject the offer of a CRN, but it cannot be imposed on you. To do so, would interfere with your ability to choose**

and unilaterally delivering the CRN without choice, does not satisfy the test for what is voluntary. In summary, they have been selective with the information they are giving you, I would recommend that you use my 'Package Holidays 1' in a response and make clear that you have not been given a choice nor can the CRN be said to have been voluntarily accepted by you;

3. They then refer to the Head of ABTA, Mark Tanzer, who is echoing his theme that the government should do something;
 - **I said right from the beginning, if we were waiting for Westminster to give clarity on the Law, we would be waiting some time. For the government, the issue has to be the Withdrawal Agreement and their duties under that agreement. They have waited correctly in my opinion for the European Commission to comment and guide. In summary, this comment presents no value to you or your request for a refund;**
4. The company again rehearses the commentary from the Package Travel Regulations (and presumably by implication the Directive), that the Law did not anticipate this situation, in other words, this situation is without precedence;
 - **Again, they are incorrect. We have had a major situation like this before, under the old regulations (when there was less clarity), when the Icelandic Volcano crisis affected travel. Holidays were cancelled, refunds provided and repatriation through other modes of transport were delivered. This crisis affected the whole of Europe and North Africa. At the time there were dire warnings given about the affect on the Travel Industry. They are also incorrect that the law does not cater for this situation. I disagree because of the 'unavoidable & extraordinary circumstances' 'definition' found in Preamble 31 of the Directive and referenced within their Ts&Cs. The scale of the crisis is not doubted, but the interdependency of the Travel Business is not the Consumer's concern; this cuts to their failures to act as one industry and create a dialogue for what is "reasonable" and indeed provide more clarity as to what will happen in Law should such a crisis develop. In summary, you can contradict their assertion by using the comments I have made;**
5. The next point is quite important; they then set out the 'terms' of the CRN and make clear that you can book another trip during the lifetime of the CRN. That end date is set to 31/1/2021. It is clear that they condition your refund on two points 1) that you can book your holiday up to that end date to the value of the CRN and 2) If you do not redeem the CRN for a holiday by 31/1/2021, you can only then request your refund - that is a total of 254 days from the date of this e mail;
 - **Quite simply, they are trying to create a new contract with you. They are dictating the terms of the 'deal' and it cannot be said to be giving you a free choice, nor are they acknowledging or respecting your rights in Law; they are attempting to deliver this to you 'fait accompli' - they have not even acknowledged any issue to what would be deemed to be a "reasonable" period. I would recommend in response that you summarise my observations but also note my further commentary on this relating to your second e mail;**
6. The next paragraph offers that they hope that you will accept the CRN but that if you wish to have a refund, it will take considerably longer;
 - **Here they are acknowledging your 'choice' and that you can 'voluntarily' accept the CRN, but is a 'word' device used to try and capture that free-choice. I would also add that it is tempered with the**

implied threat that you will have to wait 'significantly longer. What does that mean? Does it mean that if you accept the CRN you will 'only' have to wait 254 days? Does it mean that if you don't accept the CRN it will be a period greater than 254 days? In the event that you do not accept the CRN, are they suggesting that any 'negotiation' for the return of your monies will not take place, and that they consider either 254 days or 'significantly longer' to be "reasonable"? In response, I would suggest that you summarise my points;

7. Their final point simply sets out what appears to be their 'final' position. Interestingly, they appear to acknowledge that they could be taken to court with the implied threat that they will fight their position; they refer to reserving their right to producing their correspondence to the court if necessary;
 - **In civil disputes, there is no such thing as a final position until the matter is resolved, either in or out of court. In your response, you simply observe that they appear to presenting you no "reasonable" choice and that they are presenting a 'final' position. Further, acknowledge that they appear to be concerned about court action and add the following sentence: "*If I have to escalate this matter to court, please note that I reserve my right to present this and all correspondence and documents to the court on the principal issue(s) and in particular in relation to costs*";**
8. I shall now deal with the second e mail;
9. This is the CRN which they have sent to you;
10. The key phrase here is: "*in accepting this credit note*".
 - **This implies that you have already accepted the CRN and indeed the rest of the document appears to aspire or direct you toward using the CRN to make another booking. This cuts to the heart of 'choice' and 'voluntary' which I have dealt with above;**
11. I note that they appear to be making distinct references to Airline and Accommodation Ts&Cs as part of the conditions of the CRN;
 - **It looks to me that you have booked a Package Holiday and they appear to accept this by referencing the Regulations and Directive in the earlier e mail and indeed those rights within their terms and conditions. Are they trying to convert you into a contract that is not a Package Holiday? Your position should be stated toward their own Ts&Cs - in fact they acknowledge this at (f) where they maintain that the Ts&Cs that were applicable at the time you booked will continue through the lifetime of the CRN and into any subsequent booking - it appears to be a contradiction;**
12. They then refer to the Credit Refund Note Terms and Conditions;
13. They are inviting you to make a new contract;
 - **This new contract appears to be attached to the initial contract you made at the time of booking as referenced in (f). I cannot see that they are seeking to vary the terms of the contract, though it could be implied that this is the intention. You do not have to accept this variation or new terms. To do so is risky to rights without seeking formal legal advices - they know this to be the case! This is not the first 'new' Ts&Cs I have seen and is an example of the unilateral actions of the Travel Industry. You should simply point out that they are 1) assuming that you have chosen to accept voluntarily this CRN, and 2) that they are asking you to accept either new or varied terms and conditions and it could be argued that they are seeking to take advantage of your**

position which will have to be settled by seeking costly legal advices; ask them to pay for your independent legal advices which will confirm the 'spirit' in which they are offering the CRN;

14. With regards to the rest of the Ts&Cs, I would observe as follows:

- **The CRN makes no reference to Financial Protection; are the monies held within a CRN covered by 1) The ATOL Scheme, or 2) by a separate insurance. Clarity and documentation is required before any decision could be made;**
- **At (c) they refer to restrictions that may be imposed by suppliers and I would suggest by host countries. Restrictions may be related to the product but I think given the background to this CRN it must surely relate to COVID19? It is making clear that even if you book between now and 31/1/2021, even for a holiday beyond that date, you may not get all that you think you are booking nor have 'freedom of movement' in a resort or destination. This is them I suspect trying to bring to your attention the potential limitations in any future holiday product booked through a CRN - this is an important point in the making of any decision to accept the CRN and you should ask them are they expecting you to acknowledge and accept future limitations due to COVID19?;**
- **At (d) they make clear that you are not going to receive your refund (if you don't make a holiday booking) until you make a formal request on 1/2/2021 and then I suspect you will have to wait a little longer, or are they suggesting that they will pay within the 14 day period?**
- **Point (e) is important. They state: "*this Refund Credit Note is only valid where you have taken no other steps to secure a refund of the monies you originally paid to us for the booking detailed above*"; what do they mean by this? Do they mean going to court, section 75 Consumer Credit Card Act, complaining to ABTA, or any other method? This may present itself as an unfair contract term (whatever about the spirit of their proposal) and could be in breach of the Consumer Rights Act 2015; does this limit free choice; could this be deemed to be pressure to accept? A simple question needs to be asked about what do they mean by 'no other steps';**
- **They finally add that these Ts&Cs are subject to change through a change in regulation or government advices. You should ask, do they intend to make such changes to these Ts&Cs unilaterally and will you have the opportunity to reject or accept such changes?**
- **At no stage in the CRN does it acknowledge your rights under the Package Travel & Linked Travel Arrangements 2018 - this should be challenged;**

All these questions are valid because in this situation, as suggested by the European Commission recommendation, this is about choice; contracts are generally drafted by two parties - I would argue in this situation (whatever about general holiday contracts), Consumers have a right to have added into such additional Ts&Cs, the issues that offer further protections.

As you can see, this whole area for Consumers is complex, but, I stress, you are not the first Travel Consumer to face such challenges and you won't be the last. Many have maintained the course and have been successful.

One important point I would make relates to the many comments I have seen on Twitter encouraging people to take them to the Small Claims Court or MoneyClaims Online. If that is a chosen route, please fully prepare and have your case checked through formal legal advices. I have seen too many Consumers who have failed to take these steps and have ultimately failed at court; care should always be adopted in any potential litigation process! It might be made easier for you if you hold legal expense insurance (found in some house contents, membership of professional bodies, some bank accounts), credit or debit card issuers.

I would suggest that you respond to them summarising the points I have raised above.

I would also include my 'Package Holidays 1' document.

I would also send separately my fourth letter advising them that if they don't resolve the matter you will report them to ABTA.

I would also recommend that you use the 6th letter and send it to the CMA, along with your response letter and their letters, including the CRN. I would encourage you to copy in the Consumer & Tourism Ministers & the Select Committee for BEIS and make sure that this company is aware of who you are writing to.