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Cancellations and refunds team
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13 August 2020

Dear team

I am writing in response to the FCA's guidance consultation for insurance and card providers to help consumers with rights and routes to refunds.

Which? has welcomed the FCA measures for insurance customers who may be suffering financial difficulties as a result of coronavirus. We agree that as well as supporting those in financial difficulties, regulatory action is needed to mitigate the harm that is prevalent in consumers dealing with cancellations and refunds. So we broadly welcome the FCA's proposals for firms to provide better support to consumers seeking a refund.

In April Which? set out a 10 point plan¹ on maintaining consumer trust and confidence in the travel sector, as a result of widespread cancellations following the outbreak. We have since been calling on government, regulators and industry to take swift action to ensure consumers are not left out of pocket and that their rights are upheld. This includes:

- **Travel insurance terms and conditions should be more transparent and clear** with customers signposted to relevant parts of their insurance policy booklets. This will make it easier for policyholders to know if they are covered and will help customers to find out what they need to know as quickly as possible, providing specific answers to their questions.
- **Time-limits on making claims should be relaxed.** This will help customers who are struggling to get in touch or communicate with travel companies as a result of the pandemic.
- **Insurers should extend existing travel insurance policies**, where relevant, to ensure the customer remains protected when stranded abroad. This will help those who cannot get home because of government-issued advice or restrictions on travel imposed by governments (i.e. through no fault of their own).
- **Insurance providers must work more closely with the travel industry and the government** to ensure that all information given to consumers about how and when to claim is clear and consistent. This will stop people from being passed between providers and ensure they know who to contact when, for example, seeking reimbursement from their provider before turning to their insurer.

¹ <https://www.which.co.uk/policy/travel/5747/trustintravel>



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The FCA's proposed guidance rightly reminds firms of their obligations, including requirements to treat customers fairly. We have seen many consumers who do not know where to seek refunds due to the conflicting information they are given from firms across sectors, and also protracted claims processes where consumers are unnecessarily passed between insurers and card providers (see the appendix).

We would like to see this guidance increase efficiency within firms, as it should provide clarity on the claims process, and we have set out areas below in which we would like to see firms and the FCA consider further.

Which? has found a widespread introduction of exclusions relating to coronavirus that potentially undermine the value of insurance products. We have also seen cases where consumers have tried to make a claim on their insurance policy due to the impact of coronavirus, but have been rejected by their insurer on the basis of an existing exclusion (e.g. changes to FCO advice). This has left affected consumers with a negative view of the value of buying insurance and highlights the importance of insurers needing to communicate more clearly what is covered. We hope the FCA's work on the value of insurance products will address both of these issues.

Enforcement of guidance

Given that the guidance is a reactive measure intended to mitigate harm that has developed over the last four months, we believe that the FCA should take a proactive role in ensuring firms adhere to expectations. This not only includes focusing on enforcement, but also monitoring outcomes as part of supervisory work, and the FCA working with firms where non-compliance is identified.

We would therefore not only like to see the FCA review outcomes on an ongoing basis, but that the guidance should be effective for longer than the proposed period of 6 months. We also think it is crucial for the final guidance to be implemented as soon as possible to protect consumers.

As part of the FCA taking a proactive approach in this area, we would expect the FCA to consider tightening its rules if these issues are not resolved quickly. We have seen examples of consumers having taken out credit to cover travel costs, and are therefore financially impacted by delays in processing claims and refunds. We are concerned that even where insurers have accepted a claim, there are unfair and unnecessary delays in processing this. We would like to see the FCA go further in setting expectations on how firms should be handling claims, as we are concerned that insurers will inappropriately and inconsistently interpret "reasonable steps" and "unreasonable lengths."

A joint approach across sectors

When a customer makes a claim, insurers reserve the right not to pay more than their share and can make 'contribution claims' against each other where the customer may be double-insured. Insurers have agreed terms (such as those under the Personal Effects Contribution Agreement) to try to make this work consistently and efficiently together 'behind the scenes', so that the onus is not on the customer. Many customers whose holidays have been cancelled have various notional protections across different sectors, such as those provided by credit card providers, banks, the travel industry and insurers.



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Consequently, customers are repeatedly finding themselves acting as a go-between between these firms. It's often a lengthy, confusing and stressful process for the customer. The FCA's proposed guidance would not resolve the instances where customers have to keep returning to insurers in accordance with advice from firms in the travel sector.

Although the FCA's remit is limited to regulated firms, a customer's route to refunds spans sectors. We therefore believe there needs to be greater cooperation between the travel sector and financial services, such as a joint approach to process travel claims where multiple parties have potential liability, otherwise the efficiencies made as a result of this guidance risk being unwound. The FCA should consider its role in facilitating and promoting this, for example through the UK Regulators Network.

The lack of coverage for coronavirus-related disruption in insurance means consumers will need to depend more on other protections not only from within financial services (such as card providers), but particularly from other sectors such as travel. We therefore believe there needs to be a wider consideration of whether this landscape is fair for consumers and how consumers can enforce their rights.

If you have any questions regarding this response, please do not hesitate to contact me.

Yours faithfully

A handwritten signature in black ink that reads "Aileen Lees".

Aileen Lees
Senior Policy Adviser, Money
Which?



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Appendix

Between November 2019 and July 2020, Which? asked consumers who were making insurance claims to keep diaries of their experiences. 47 consumers were making travel claims from insurers and card providers, and 25% of these experienced issues relating to receiving refunds or the claims process itself. This was often drawn out over periods lasting weeks or months. In some cases, consumers noted how confusing the procedure was, including being unsure about who they were supposed to approach first. Others remarked feeling frustrated they were only asked weeks into the claims process to obtain or submit proof of attempting to get a refund, when they hadn't known to do so upfront. Some consumers were also cynical about what felt to them like firms mutually trying to 'pass the buck'.

We have provided a selection of these experiences below.

"The claim is not enormous but the principle is important and the issue has been going on for 6 weeks. The issue is perhaps between the holiday company and the insurance company, and I feel that both are using the other as a method of not honouring my claim."

"It is all related to COVID19 so in my opinion it should have been an automatic refund and all one should have to do is show booking confirmations. [Travel company] did not send me anything, only referring to their website. The hotel booking was through [card provider], I was told as a re-booking facility was available a refund was not applicable, so back to insurers."

"Initially [holiday company] stated I had to claim via my insurance. [Insurer] stated I had to claim via [holiday company]. Basically neither wanted to know, so left out of pocket and wonder why one takes insurance out!"

"I was very disappointed that the insurance company rejected my claim so I took the matter up with the tour operator. They too could not understand why my claim had been rejected and said they would take the matter up with the insurance company. Meanwhile they have promised to refund my payment if the insurance company still refuses."

"I was puzzled about [the insurer's] request that I contact bank/credit card companies I had used to pay for relevant parts of the claim to state in writing they would not refund the payments. When I contacted them, neither knew anything about such a request. Indeed, my bank phoned their insurance branch (who were dealing with the claim) to ask what they wanted, and were told no such proof was required. I felt I had spent a stressful hour trying to comply with a request that was false."



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"Initially, I felt that [the travel company's] refusal was just 'passing the buck' and were just stalling for time as I believed that the issue really did lie at their door. However, in order to follow 'due process' so that this claim would be fulfilled as soon as possible - I had to take a loan out to pay for the flights for my wife and myself - I contacted my travel insurer who sent me a claims form via email which I completed and returned. As this was a request for additional information, I believed that the insurer was taking my claim seriously so I expected this to complete the collation of proof for my claim and for them to pay up! However, I also felt that this could be more delaying tactics - but again, I complied so that they couldn't complain that I hadn't followed their instructions. The insurer turned down my claim and told me I must first contact my travel provider to make this claim."

"The response [from the insurer] was annoying in that it indicated, several weeks after the initial claim had been lodged, that I would need confirmation in writing that the credit card provider had refused to cover the costs. This could have been stated at the outset. I had expected I would need such confirmation from the travel agent and had obtained it meantime in anticipation. I felt the process was just being delayed and my experience of dealing with the airline, the travel agent and the insurer was that everyone was trying to pass the buck to someone else, leaving the client as the go-between and the one out-of-pocket."