



Which?, 2 Marylebone Road, London, NW1 4DF
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Which? submission to the Government's Covid Passenger Charter

Summary and recommendations

Since March 2020, the international travel sector has experienced unprecedented widespread disruption to flights and holidays.

In response to the strain on their businesses, we saw numerous holiday companies and travel operators breaking the law, withholding billions of pounds of refunds and rendering consumer protection meaningless. Additionally, due to the evolving nature of the global health crisis, and within the small window of borders reopening last summer, many travellers were left confused and unprotected due to conflicting government advice. Our latest investigation on package holiday providers suggests that many will break the law on refunds again as international travel re-opens.

With hopes of a return of visiting family and friends and taking holidays, the hard lessons of summer 2020 must be learnt so that travellers have clear advice to enable them to book with confidence and strong protections that will be upheld to keep their money safe. With additional requirements for testing expected this year, travellers must also have access to trustworthy information at the right time in order to travel safely this summer.

We therefore welcome the Government's plans to publish a Covid-19 Passenger Charter setting out consumer rights and responsibilities. In order for this to meaningfully support people to make informed decisions about booking travel this summer, Which? strongly recommends the following information and commitments are included in the Charter to be published on 17 May ahead of travel reopening:

1. The Government's Passenger Charter must make travellers aware of their rights under the Package Travel Regulations and EC261, and information on what constitutes good flexible booking policies
2. Regulators must monitor industry behaviour on refunds and take strong action against any operators found to be misleading customers or breaking the law
3. FCDO and DfT advice to travel must be aligned to ensure passengers have clear and reliable information to travel safely.
4. The Charter must clearly signpost to trusted information and advice on PCR testing providers, expected timings and capacity to provide services.

5. The Government and regulators must ensure that insurance providers are being clear about Covid-cover terminology.
6. The Government must ensure the security of travellers arriving at the border with clarity over social distancing measures and adequate staffing to avoid long queues at airports.

We also recommend that the Government ensures the following is delivered in time for the following review in June:

7. The problems currently affecting the PCR testing market are urgently addressed. In particular, we would highlight the UKAS accreditation system, pricing and accessibility of tests, and the poor quality of service and unfair terms by some providers.
8. In addition, there is urgent need for coordination across Government departments and sector regulators in addressing reducing levels of insurance cover and the rising prices.

Detail of recommendations

1. Booking and consumer protections

All travellers should be entitled to a refund if the FCDO changes its advice, travel corridors change, or there is a national or local lockdown preventing travel.

- **Travellers must be properly informed of their legal rights and made aware of good flexible booking policies.** People intending to travel this summer must be responsible for making properly informed decisions before booking travel. In order to do this, the Passenger Charter must clearly set out the rights and responsibilities of travellers, industry and regulators under the Package Travel Regulations and EC261.
- Additionally the Charter should also include information and advice on flexible booking policies, and the quality and variation of flexibility on offer so that travellers can make informed decisions before booking. There is a wide variation between different holiday operators' booking and refund policies, therefore holiday providers and airlines must be clear in their marketing material and policy documentation about the level of flexibility and the key limitations of their offer. For example:
 - Love Holidays offers only a partial refund on package holidays for the land elements. Refund of the airfare is dependent on the airline's T&Cs and often unrecoverable. This applies for any scenario including government lockdown or hotel quarantine on return to the UK.
 - Trailfinders is offering a full refund in the event of lockdown/FCDO warning against non-essential travel/UK quarantine (red or amber countries). Fee-free amends are available for any reason, including disinclination to travel (but unrecoverable costs may apply).
- **The Government must ensure the CMA and CAA take appropriate action against industry's misconduct by making effective use of their existing**

enforcement powers. Which?'s latest investigation on package holiday providers found that some of the UK's largest holiday companies, who have been breaking the law on refunds for 12 months, will continue to do so in the future. All travellers have a legal right to a refund in 14 days if their holiday is cancelled, and seven days if the flight is cancelled; consumer protections must be enforced by the sector regulators in order to have any value. Companies that refuse or fail to refund within 14-days for a flight or 30-days for a package holiday should face legal action. Regulators must make clear that unfair commercial practices and contract terms across the travel industry will be monitored, with those found breaking the law to face enforcement action.

- **DfT and FCDO must work together to align travel advice and ensure messaging to travellers is consistent.** FCDO advice must be consistent with DfT's RAG ratings of green, amber and red countries to ensure travellers who no longer wish to travel due to their destination country being listed as amber, are protected under the Package Travel Regulations and are able to get a refund. This would ensure that those who have not purchased package holidays with flexible booking policies are still receiving protection.

2. Covid testing

With PCR testing a requirement for traveling and a necessary safeguard against 'variants of concern', **the Government must urgently address the problems currently affecting the PCR testing market with regard to availability of information, accreditation, pricing and accessibility of tests, as well as the poor quality of service by some providers. It must also ensure there are effective consumer protections in place for travellers in the event of any problems with testing, ahead of reopening travel after 17 May.**

- **Information and advice.** Choosing the wrong PCR test provider could pose a risk, not just to holiday plans, but to public health and the success of the vaccination programme. Travellers should be aware of who exactly is taking their swab and whether they have been inspected or approved. It is not enough for the Government to say that "individuals should conduct their own research about available providers and the tests they supply" for a market that is so new and prone to scams and fraudulent behaviour.¹ In addition, it is very unhelpful for the Government to have published a list, which currently has 500 labs, that includes both fully accredited providers and those who are still seeking accreditation, and for this to be simply sorted in alphabetical order with no other guidance or information. The public needs better information to help them navigate this complex market. The Government must urgently revise and improve the information available to the public and ensures it includes the following:

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<https://www.gov.uk/government/publications/list-of-private-providers-of-coronavirus-testing/list-of-private-providers-of-coronavirus-testing>

- The list of UKAS accredited providers must only list labs that have been fully approved and passed the three stage accreditation process;
- Information on the labs' capacity for testing, which would help travellers make informed decisions before booking;
- Information and advice on consumer protections and what to do when things go wrong.
- **Testing capacity.** Which? has found that private labs are failing to deliver test results on time, raising concerns about the capacity of the UK's travel testing system weeks before international travel is set to re-open. The Government must work with industry to ensure the system will be able to cope with demand once international travel restarts.

In addition, ahead of its review of travel advice expected in June 2021, the Government must work on the following issues:

- **Affordable and accessible PCR tests.** The Government must work to ensure travellers have access to affordable and accessible PCR testing to meet travel requirements. Therefore, it must consider the following options:
 - Work with industry to establish a fair price and ensure test providers are not profiteering from travellers; or
 - Cap the costs of PCR tests as other countries have done.
- **Quality of service and accreditation.**
 - Government must ensure that PCR testing is overseen by medically trained staff and testing labs have been fully accredited and gone through the three stages of UKAS accreditation before being classified as approved labs on the Government's list and being able to provide testing services.
 - Test providers must be required to provide test results to travellers in time to meet Government testing and quarantine requirements. If test results are not received in time, consumers must be entitled to a refund and be able to receive compensation for their missed holiday or flight.
- **Consumer protections and unfair terms.** A review of enforcement of unfair terms in travel was long overdue before the current pandemic. CMA guidance is out of date, and the CAA have not followed up on their research into unfair airline terms and conditions in 2019. Much greater resources must be allocated to enforcement of the CRA 2015 unfair terms provisions and a clearer and more transparent understanding of division of responsibilities put in place between the CMA and CAA on this area of enforcement activity.

3. Travel insurance

Travellers buying new insurance policies face inadequate cover and increased costs, with limited understanding of the extent of their protections in the event of Covid-related disruption to their travel plans. Government must work with industry and regulators to ensure all travellers

adequately understand their travel insurance cover and can access cover that protects them against FCDO advice related to the pandemic if international travel is to restart.

- **'Covid cover' terminology.** Travel insurance providers need to be clearer in their marketing and policy documentation about the key limitations of their cover. Policy holders are overestimating how comprehensively their travel insurance covers them against Covid-19 - with half believing their policies protect them against changes in FCDO advice (which has been almost entirely withdrawn across the market) and newer customers most likely to believe they have it. Some of this could be attributable to insurers marketing their policies as containing 'Covid Cover' or 'Enhanced Covid-19 Cover' - blanket terms which conceal a lot of variety and disguise a lot of shortfalls. This February, we surveyed 2,837 members of the general public that owned travel insurance and asked them if they believed their policies would protect them in each of six Covid-19-related scenarios.
 - Forty-one percent of travel insurance customers surveyed have plans to travel internationally in 2021, with 29% having made arrangements or bookings². While our research found that most insurers provide some degree of protection for both medical and cancellation costs related to Covid-19, we believe many customers could be misjudging how far their 'covid cover' will protect them.
 - Around half believed their cover contained protections that our research suggests has become vanishingly rare - if available at all - from travel insurers. 50% of policyholders believed their policies covered costs if - after booking their trip - the Foreign, Commonwealth and Development Office (FCDO) advised against travel to their destination. 47% believed they would be protected in the event that a local or national lockdown prevented travel, and 46% believed they would be covered if their airline or holiday company postponed their travel but wouldn't offer a cash refund.
 - Cancellation cover in the event of a change in FCDO advice was a common element of cover in policies prior to the emergence of Covid-19. Some customers with older policies may still benefit from some of these protections, most likely if their trips were booked and insured prior to March 2020. However since March, most insurers (including all 73 we contacted in October) considered the pandemic a 'known event' and excluded FCDO cancellation cover from new policies and for newly booked trips. Yet our survey found that newer customers (those with their insurer for less than a year) were more likely to believe they had this cover than those that had been with their insurer for longer.
- **Looking beyond the immediate reopening of travel on 17th May, there is urgent need for coordination across Government departments and sector regulators in addressing reducing levels of insurance cover and the rising prices.**

4. Airports safety and border control

² Sobers, Dean (2021) 'Insuring your holidays', Which? Money, May 2021, p7

It is not acceptable for travellers to have to face long queues when arriving at the border. When international travel reopens, travellers will need reassurance on airport safety and that they won't face long queues at passport and covid testing documentation control. The Government must ensure airports have clear guidance in place on how to manage restrictions on social distancing for people arriving at the border; border operations must be adequately staffed and clearly communicated to travellers to ensure their safety.

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About Which?

Which? is the UK's consumer champion, here to make life simpler, fairer and safer for everyone. Our research gets to the heart of consumer issues, our advice is impartial, and our rigorous product tests lead to expert recommendations. We're the independent consumer voice that influences politicians and lawmakers, investigates, holds businesses to account and makes change happen. As an organisation we're not for profit and all for making consumers more powerful.

Annex

Which? travel insurance consumer survey, February 2021.

The table shows the proportion of policyholders that answered 'yes' when asked if they believed whether their policies covered them for six Covid-19 scenarios

	Length of time with current insurer			
	Less than six months	Between six months and one year	NET: More than one year	All customers
1. Cover for costs if - after booking my trip - the Foreign, Commonwealth and Development Office (FCDO) advises against travel to my destination	65%	56%	48%	50%
2. Cover in the event that a local or national lockdown prevents me from travelling	60%	55%	45%	47%
3. Cover in the event I can't travel because I have to self-isolate at home because of NHS Test and Trace	58%	48%	33%	37%
4. Cover in the event I can't go on my trip because I'm diagnosed/test positive with COVID-19	66%	51%	41%	44%
5. Medical cover if I catch COVID-19 overseas	63%	58%	47%	50%
6. Cover if my airline or holiday company postpones my travel but will only offer a rebooking or credit and not a cash refund.	57%	53%	43%	46%

In February 2021, we surveyed 2,837 members of the general public.