
COVID19 - Travel Consumers in Crisis

Submission Paper to UK Transport Select Committee

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Consumers
Campaigning
Commentating

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Introduction:

This submission has been produced in response to a call for evidence by the UK's Parliamentary Transport Select Committee. It is drafted with the intention of highlighting the authors response to previous evidence and general issues surrounding COVID19, with particular regard to Travel Consumers. The author is mindful of the information contained within the Select Committee's Home page about submissions, but, given the breadth of issues affecting Consumers, the experience of the author and the previous evidence heard, it was considered more helpful to create this report which briefly but comprehensively highlights issues, albeit it in summary form.

About the Author:

I am a retired Police Officer and a self-funded Solicitor. I work extensively in the media, providing comment on Travel Consumer related issues. I am not connected to nor do I work within or with any Law Firm or other Legal entity.

In the last 15 years, I have provided extensive comment to the UK & EU about Travel Consumer issues, creating over 70 reports to highlight the detriment they suffer.

For 14 years, I was the Consumer Director of the Independent Travel Consumer Organisation, HolidayTravelWatch (HTW), until I left that post in July of this year.

I have some 20 years experience, both in the handling of holiday claims and latterly as a Consumer Campaigner, helping Consumers deal with their Travel Complaints. Whilst at the helm of HTW, we proudly aided 97.5% of holidaymakers to self-resolve their complaints and worked with specialist lawyers to help progress less than 2% of holidaymakers cases, where it was clear that they would not be capable of settlement by self-resolution methods.

I am currently active in the work of creating an Aviation Standard for Cabin Air Quality. I am the BSI's UK Representative on the CEN TC436 Committee and I also sit as a Passenger Representative on the USA's ASHRAE SSPC161 Committee.

I do not receive any funding from any source and my continuing work to independently advocate the Consumer position is entirely self-funded, with the exception of a contribution to my travel expenses by the BSI in my work representing the UK and occasional media fees.

Opening Comments:

The COVID19 crisis has provided an unprecedented challenge to countries, industry and citizens/ consumers.

The factors that are influencing decisions are uncertainty, fear and unilateral actions.

In terms of our daily actions, the certainty we all rely on is found in the basis of our personal relationships but also within our contractual and legal relationships.

It is these relationships that have been stress-tested to the extreme and within that stress, we can see quite clearly the success or failure of current commercial/consumer relationships

Support for Industry:

I have been witness to many 'crises' within my travel consumer work and have provided wide assistance to consumers and media commentary.

From the very early stages of this crisis, I have publicly offered:

- Sympathy to an industry;
- Support for Industry;
- A call for government to support Industry;
- I have publicly offered to work with key elements of industry to define a sensible solution to the issue of Credit Refund Notes (CRN);
- I published how such a system of CRN's could potentially operate;
- I never received any contact or response from Industry to further discussions.

Issues for Travel Consumers through the COVID19 crisis

There are many commentaries about the many factors that are affecting Consumers, but they can be summarised as follows:

Principle Issues:

The principle issues revealed by the issue of CRN's are:

- **Methods of payments made or received by Travel Companies.** This is a difficult area to establish because of the commercial sensitivity of such matters, because they reveal the business model of a particular company and potentially, its route to profitability. The current Consumer experience reveals that one of the principle reasons given for having to wait for a refund, is that Travel Companies are waiting for suppliers to refund them. There are several methods detected:
 - Some Travel Companies appear to pay their suppliers in arrears¹;
 - Travel Companies contracting with hoteliers may have to pay a deposit some 120 days before the customer arrival and confirm with the contractual payment, the customer details, 30 days before arrival²;

¹ <https://www.ft.com/content/1ec96fdc-ded4-11e9-9743-db5a370481bc>

² <https://cache.radissonhotels.com/galleries/radblu/PDF/CPTZA/CPTZA TOUR OPERATOR AGREEMENT TERMS AND CONDITIONS 2.pdf>

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- Allotment is an important factor because, depending on commitment and size of the operator, it appears that discounts on the list price of a hotel room can range from 10% to 50% and its suggested that large tour companies can potentially command up to a 70% discount³;
 - This latter point is important because it can dictate the size of profit or market-leading price that a travel company can offer;
 - Travel Agencies or Host Agencies can operate through a commission-based methodology which appears to suggest a commission-level of between 10-16% (potentially assessed by annual cost or passengers delivered), and a much lower rate for the sale of air tickets⁴;
 - Key suppliers such as Airlines or Cruise Companies encourage direct sales from B2C as this delivers a greater profit to those companies and encourages Consumers to purchase extra bolt-on products;
 - This summary is not intended to be definitive, but it introduces the wide methodology of how Consumer money is paid or received;
 - **Current Consumer legislation does not factor in a waiting period for the return of money from suppliers and probably for a very good reason. If Consumers had to wait lengthy periods for the return of their monies, it would deliver an unfairness and complexity to contractual relations beyond the immediate contract they made.**
- **The “reasonable’ period for Refunds:**
 - Current law is clear about the period for which a Consumer should expect to receive a refund:
 - The majority of ‘holidays’ (flight & hotel) sold are governed by the Package Travel Directive⁵ (PTD) and the UK’s implementation of that Directive, The Package Holidays & Linked Travel Arrangements 2018⁶ (PTR). Regulation 14 provides for a 14 day refund period;
 - Airline ticket refunds are governed by Regulation (EC) 261/2004 (Air Passenger Rights)⁷ (APR). In the current scenario, Article 8 provides for a refund period of 7 days;
 - Consumers tell of having to wait between 120 - 270+ for their refunds;
 - CRN’s are delivered ‘fait accompli’ to Consumers;

³ [https://en.wikipedia.org/wiki/Allotment_\(travel_industry\)](https://en.wikipedia.org/wiki/Allotment_(travel_industry))

⁴ <https://hostagencyreviews.com/blog/travel-agent-commissions>

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32015L2302&from=EN>

⁶ <https://www.legislation.gov.uk/ukdsi/2018/9780111168479/contents>

⁷ https://eur-lex.europa.eu/resource.html?uri=cellar:439cd3a7-fd3c-4da7-8bf4-b0f60600c1d6.0004.02/DOC_1&format=PDF

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- Consumers are not accepting these voluntarily⁸;
 - Consumers have no choice;
 - There is an overall failure by Industry and indeed government to recognise that Consumers are experiencing their own financial pressures both through and beyond this crisis;
 - There is a lack of clarity on Consumer Financial Protection on CRN's, either from government or from travel companies. There is a question mark over such protection on extra value percentage elements added to a CRN, (I will comment further about the question of Financial Protection);
 - There is a clear indication that industry has decided the period that is “reasonable” for Consumers to wait for their money - there has been no open consultation nor a consensus between Industry and Consumers;
 - The Competition & Markets Authority (CMA) have failed to actively engage to advocating the position for Consumers and protect their rights under law (it appears that they do not intend to investigate breaches of the PTR)⁹;
 - Further, the CMA has contributed to the uncertainty surrounding CRN's by making the following statement: “*where there are statutory deadlines for payment – like those which apply to package holidays – businesses should take those into account*”¹⁰. This does not provide clarity to Consumers nor is it fair to those within the travel market who have demonstrated that it is possible to comply with the law on refunds^{11 12 13};
 - Through social media commentary, I have advocated a realistic approach to the question of what constitutes a “reasonable” period, and in the absence of a stakeholder approach to this question, I have concluded that:
 - The Law should not be changed;
 - That any period of ‘grace’ on rights (ensuring rights are enshrined into any CRN), should deliver refunds 45 days from the date of cancellation;
 - I do not subscribe to the assertion that a 12 (365 days) or 6 month (182.5 days) period, constitutes a “reasonable” period, whatever the circumstances;

⁸ https://ec.europa.eu/info/sites/info/files/recommendation_vouchers_en.pdf

⁹ <https://www.gov.uk/government/news/covid-19-cma-to-investigate-cancellation-policy-concerns>

¹⁰ <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>

¹¹ https://www.travelmole.com/news_feature.php?news_id=2042419&c=setreg®ion=2

¹² <https://www.travelweekly.co.uk/articles/368924/right-to-refund-prepares-for-legal-action-against-government>

¹³ <https://www.which.co.uk/news/2020/05/small-holiday-companies-pay-refunds-while-multinationals-stall/>

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- It is my view that the 45 day period would allow for a Travel Company to maximise its efforts or to secure support funding for its operations either through government or private sources;
 - The question must be asked: 'Is this a failure of the Travel Industry's methodology of doing business with suppliers?';
 - Regulation does not make that distinction - Consumers generally have one contract and therefore their rights stem from that relationship;
 - There is an overall failure to define what is a temporary period to accept a refund during this crisis:
 - It is my view that much of this crisis in travel could have been averted by constructing a timeframe that would have satisfied all stakeholders;
 - It is also a political failure, not just at Westminster, but also at an European and International level;

Key Issues:

- **Failure of initial information being provided to Consumers;**
 - This is witnessed through the many Consumers who have yet to receive clarity on the future holidays, with some Travel Companies maintaining that holidays will go ahead (setting their own date-line for resumption of operations). Consumers are being advised that holidays are going ahead (causing some stress to Consumers on health issues (Note Preamble 31 of the PTD & Regulation 12 of the PTR)), whilst apparently ignoring issues such as country entry limitations, destination limitations and UK Foreign Office advices against all but essential travel(19/5/20)¹⁴;
 - I have also received indications that messaging over refunds is contradictory and fails to deliver clarity, requiring the Consumer to invest time and energy to seek clearer information;
- **Difficulty Consumers experience during contact with travel companies (for example 2/3 hour waits for phones to be answered, e mails not responded to):**
 - Is this a problem with the system of 'furlough' and the inability to properly staff a company's response?
 - Should companies be supported for digital initiatives they create to deal with this crisis?
- **Failure to acknowledge that Package Holidays have been sold and that therefore Package Travel Rights do not apply:**
 - Is this a delay device used in contact with Consumers when their Ts&Cs perhaps reveal the truth of the product they are selling?
 - Some attempt to use the legal concepts of 'frustration' and 'impossibility of contract' to thwart or override that written within legislation;

¹⁴ <https://www.gov.uk/foreign-travel-advice>

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- **Provision of incorrect positions to Consumers, in some cases purporting this to be ‘law’:**
 - Strong references have been made to Consumers about Trade Body advisories;
 - What are the roles of trade bodies in such a crisis?
 - Should they adopt a public and trade role?
 - Should they remain wholly a trade body?
 - Should they obligate their member Travel Companies to send out their key information, that they are using to publicly advise members, to every Travel Consumer?
 - **Failure by Credit/Debit Card Companies to deal adequately with Section 75 Consumer Credit Card Act/Chargeback complaints:**
 - Card Companies and Insurers are generally resistant because they understand that Consumers have recourse to Consumer Rights;
 - I have seen comments that are legalistic by reference to legal principles, which are inaccurate when viewed against terms and conditions;
 - I have also seen complex statements relating to the existence or non-existence of contractual relationships which when examined do not stand against the assertions made;
 - This requires Consumers to engage in a time-consuming complaints process to challenge and persuade these companies to reverse their decisions;

Residual Issues:

The following provides further commentary relating to evidence previously given and additional observations:

- **Financial Protection:**
 - Without having the benefit of previous hearing transcripts, it appears that there were calls for Consumer Financial Protection in Holidays to be reviewed;
 - The concerns stem from the lack of clarity relating to the status of CRN's and in particular the extra-value benefits that may be added to a CRN;
 - Between 2005 & 2015, I was heavily engaged in presenting and arguing for the new rights within the PTD. One principle discussion related to Financial Protection;
 - The debate ranged between whether the new PTD should import a pan-European solution (there are many levels in operation in Member States), or whether the PTD should simply leave it to Member States;
 - There was a wide objection to the pan-European solution - the UK was one of the objectors;

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- My view was, and remains, that a pan-European solution would benefit the confidence for Industry & Consumers, whilst recognising that European Consumers (and I include UK Consumers), will continue nonetheless to buy products and services from companies based within the Single Market;
 - Irrespective of the UK's decision to leave the European Union, the reality that companies will base themselves in the Single Market (evidenced by Travel Company activity before the Referendum and since the Referendum) is clear, along with imposing their choice of Jurisdiction for Consumers in that Market;
 - The Thomas Cook collapse has clearly strained the ATOL scheme and we may find in time, the UK will have to accept that Consumer economic decisions and activity will remain within the Single Market, when having any future discussion on Financial Protection. If the UK 'goes it alone', then it will have to deliver an ATOL 2.0 scheme that rides above and beyond that created by the European Union, in order to deliver a higher standard in Consumer Protection. The alternative will be that the UK will have to have that discussion with the European Union, to embrace a pan-European solution;

The Inbound Quarantine Period:

- I have noted the outrage of Industry participants to the suggestion that the UK imposes a 14 day quarantine period for incoming passengers;
- It was surprising to read that Industry were surprised by the intended actions of the UK government;
- I fail to see how they could be so surprised by the UK's decision, given that many of them are members of the International Air Transport Association and will have full access to IATA's country list of measures being adopted¹⁵. Such measures include, bans, health-certification, tests and 14 day quarantine period;
- In my view, whatever about the dire predictions made through representations, Industry cannot rely on their 'surprise' to this announcement when they are fully aware of global measures;
- **It is also my view, that the UK is having to introduce such measures, in order to demonstrate to the global community that the UK has taken all possible precautions. Such measures will ensure that in the lockdown-easing-to-come, the UK will be considered as having an equivalence in measures when 'Travel Bubbles' are created;**

Repatriation Flights:

- Frankly, this is a scandal that should never have happened;
- Did dogma trump common-sense?
- The UK could have benefitted from wholesale use of the EU's Civil Protection Mechanism whereby flights could have been arranged and the mechanism would have paid for up to 75% of the repatriation flight cost;

¹⁵ <https://www.iatatravelcentre.com/international-travel-document-news/1580226297.htm>

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- We should note that the ‘Mechanism’ states: *“The overall objective of the EU Civil Protection Mechanism is to strengthen cooperation between the EU Member States, 6 Participating States and the UK during the transition period, in the field of civil protection”*;
 - It therefore appears that the UK had full access to this scheme;
 - It appears the UK did deploy the scheme is about 6 flights, but chose to ‘go it alone’, creating a fund of £75m for UK-specific repatriation flights and on reports I have seen, it would appear that Citizens were asked to pay anywhere between £250 to £1,000 for their return flights^{16 17 18};
 - It would be wrong not to acknowledge the fine work carried out by some UK Embassies, particularly Morocco, but there is plenty of commentary from Consumers that indicate that they received a less than satisfactory service from the UK Embassies and Consulates in other parts of the world^{19 20 21};

Flight & Airport Personal Protection Measures:

Again, the evidence reported that airport and airline operators railed against measures that may be required, to demonstrates that thei services are not responsible for a further spread of COVID19:

- Airlines complained that the introduction of social-distancing or other methods were simply not practical and would interrupt their business models;
- The discussion on keeping the middle seat free added to the ‘loss of income’ argument;
- Globally, there has been a discussion, or lack of discussion on protecting flight crew;
- There are further representations that Cabin Air is clean because of HEPA-filter technology (that depends on the HEPA-filter installed, if at all);
- Airports have complained that introducing measures could see queues of up to 1km long for each flight;
- The reality is that the Aviation Industry is contracting;

¹⁶ <https://www.theguardian.com/uk-news/2020/apr/16/uk-flies-home-1000-britons-but-65000-left-in-limbo-by-covid-19>

¹⁷ <https://www.expressandstar.com/news/uk-news/2020/04/29/more-than-20000-britons-repatriated-on-government-flights/>

¹⁸ <https://www.bbc.co.uk/news/uk-england-52396599>

¹⁹ <https://www.itv.com/news/2020-03-30/repatriation-coronavirus-covid-19/>

²⁰ <https://www.expressandstar.com/news/uk-news/2020/03/30/britons-stuck-abroad-slam-unclear-rules-for-repatriation-flights/>

²¹ <https://www.express.co.uk/travel/articles/1265705/flights-repatriation-return-UK-coronavirus-covid19-India-Nepal-Philippines-South-Africa>

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- Airline fleets are being mothballed and new orders for aircraft are being cancelled;
 - There is a growing consensus in the Aviation Industry that a return to 2019 Passenger levels will not be achieved until 2023²²;
 - Therefore, it must logically follow that given the continued global pandemic measures (foreseeable until a vaccine is produced), the volume in passengers will be lower and therefore schedules will operate at a lesser frequency;
 - A further logic must also follow. Given measures that will be required, airlines will ensure that they maximise their turnover and profit by increasing costs for air travel (families to sit together/individuals to be separately seated) - the 'cheap' ticket is temporarily suspended;
 - Consumers are going to have to make economic decisions, particularly, for example, if flight tickets increase by say 50% to compensate airlines for reduced schedules and load-factors;
 - In addition, there are already initiatives being demonstrated for the world of pandemics. For example, PPE for aircrew²³, aircraft seat divisions²⁴ and robotic disinfection at airports²⁵ (note the COVID-entry methodology into Hong Kong Airport²⁶) (it should also be noted that I understand the issues of aircraft 'equipment' certification - a challenge for regulatory authorities (fast-track?));
 - It is worthy to note, despite the reluctance of airlines to apparently engage in COVID-Protection methods, some have already started to import some COVID-Methodology²⁷;
- **Failure of government and ministers to openly engage, comment, advocate or protect Consumers:**
 - It is disappointing to note that the Consumer Minister²⁸ and it appears the Tourism Minister²⁹ (noting the latter's recent comments at the G20 about outbound tourism³⁰), have not engaged more fully in the plight of the Consumer and the conflict within the Industry.

²² <https://www.iata.org/en/iata-repository/publications/economic-reports/covid-19-outlook-for-air-travel-in-the-next-5-years/>

²³ <https://www.tgasia.com/2020/04/30/airasia-tests-red-hot-ppe-suits-for-cabin-crew/>

²⁴ <https://interestingengineering.com/flight-after-covid-19-hygienic-screens-in-economy-class-cabins>

²⁵ <https://www.businesstraveller.com/business-travel/2020/04/05/hong-kong-airport-is-using-virus-killing-robots-to-disinfect-public-areas/>

²⁶ <https://www.hongkongairport.com/en/COVID19.page>

²⁷ <https://youtu.be/kqCkr8o7uRU>

²⁸ <https://www.gov.uk/government/people/paul-scully>

²⁹ <https://www.gov.uk/government/ministers/parliamentary-under-secretary-of-state-for-sport-tourism-and-heritage>

³⁰ <https://www.gov.uk/government/speeches/tourism-ministers-speech-at-the-extraordinary-g20-tourism-ministers-meeting-on-covid-19>

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- Further, there are no apparent robust interventions from central government about these important matters.

Additional Information:

Attached to this Submission are the following Annexes:

- **Annex 1** provides examples of commentary via social media on COVID & Travel from 30/1/20 to the present day. Topics include support for Travel, calling on the government for supportive measures for Travel, inviting Travel to engage on Rights, setting out how a CRN should look, Global Travel Trends during COVID, supporting Consumers, links to my podcasts, delivering free letters to Consumers;
- **Annex 2** provides examples of the free letters available to Consumers.

Final Recommendations:

I would recommend that the Transport Committee give due regard to:

- Consumer Rights & the difficulties faced by Consumers;
- What is considered “reasonable” for CRN’s with due regard to Consumer perceptions & difficulties;
- Matters outlined within the ‘Residual Issues’ section of this report, particularly PPE in Public areas and on Flights.

It is a simple fact that in order to have a good economy, you must have a healthy population. Government should be robust in its approach to protecting both, in equal measure, whilst ensuring that they do not create the conditions to undo nearly 50 years of fairness, through legislation, for both Industry and Consumers.

The solution to the CRN issue was simple to deploy, if the Industry had been minded to engage in good stakeholder consensus, including with those who hold dissenting opinion. The result is a split Industry, a failure of Rights and ultimately a dissatisfied Consumer. The challenge exists to rectify these failings and build confidence in the Travel Product for the future.

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