

Marcus Clements
Head of Consumer Policy



Scott Marshall
General Counsel
Eurostar
[by email]

23 October 2020

Dear Scott,

Refund policy during the COVID-19 pandemic

Thank you for your response to our letter of 14 July in relation to your current refund policy in place during the COVID-19 pandemic.

I am grateful to you for providing information about your refund policy and screenshots of relevant communications with your passengers in your response. However, we have concerns that the information you have provided to consumers will result in some consumers being confused about or misled as to their existing contractual right to a refund.

In this letter, we set out how we consider you might revise the information you provide to consumers in order to make this clear. We also have some follow-up questions seeking clarification on specific points.

Existing refund rights

In the event of the booked service being cancelled

In Annex 1 of your letter, you have provided some example text titled 'proposed update to Cancellation email'. Please clarify whether this is the email that is currently being sent to passengers; if not, we would appreciate sight of the current email.

The example email you provided references the eVoucher availability and exchange options when the passenger's Eurostar service has been cancelled. A hyperlink is also provided to allow passengers to find out more about their options and takes the passenger to your "Disruption" page where the eVoucher availability and exchange options are referenced. Should a passenger wish to pursue a refund the "Help Centre" link enables them to progress and claim a refund. However, nowhere in that email is any mention made that the passenger has a contractual entitlement to a refund in the circumstances where Eurostar has cancelled the train.

While only a court can make a final determination on a matter such as this, we consider that this state of affairs is a breach of the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)¹. Regulation 3 of the CPRs prohibits unfair commercial practices, and a commercial practice is considered unfair if, inter alia, it is a misleading omission. Under Regulation 6, a commercial practice is a misleading omission if it omits or hides material information, and as a result causes or is likely to cause the average consumer to take a transactional decision he or she would not have taken otherwise. Material information means the information which the average consumer needs to take an informed transactional decision.

Where you are identifying to a passenger that their service has been cancelled, and are purporting to set out what options are available to the affected passenger, the fact that they have a contractual right to a refund is clearly material information. Based on the information you provided to us, we have serious concerns that your communications with passengers focus too heavily on the eVoucher and exchange options; your drafting strongly suggests that such a passenger has only two options through its use of the text “You can request an eVoucher for the full value of your booking [...] If you’d rather not request an eVoucher, you can exchange your ticket for a later service or departure date.”

Our view is that your email to passengers, as a consumer notice, omits or hides the option for a full cash refund, where it applies. We are concerned that the average consumer would not click on multiple links through to the Help Centre to find out about their existing contractual right to a full cash refund when the email is silent about the existence of this option. We consider that instead the average consumer is likely to consider, based on the information contained in that notice, that they are limited to only the two referenced options available – eVoucher or exchange. We also have concerns that your approach does not meet the needs of vulnerable consumers, including those who are not confident online.

This is further exacerbated by your description of certain types of tickets as being ‘non-refundable’. In your information summarising ticket terms and conditions (such as the example titled “Business Premier – info always available during booking process to summarise ticket conditions” in the annex to your letter), Standard and Standard Premier tickets are described as ‘non-refundable’. However, these tickets are refundable in certain circumstances - for example, consumers are entitled to a refund if their booked train is cancelled and no service has been provided. This is reflected in your Conditions of Carriage² (32.2.3). Therefore, we consider this description is potentially misleading.

¹ <https://www.legislation.gov.uk/ukxi/2008/1277/contents/made>

² <https://www.eurostar.com/uk-en/conditions-carriage>

We expect you to amend your cancellation notice to include a clear reference to the contractual entitlement to a refund.

Business Premier

We note the information you provide to Business Premier passengers on your website, in the booking confirmation and in pre-journey communications. We request that you clarify whether Business Premier passengers receive a bespoke cancellation email which clearly sets out their rights to a full refund, or whether the email which you included in the annex to your letter is sent to all passengers regardless of their ticket type. If you do provide such passengers with a separate type of cancellation email, please provide us with a copy.

As with standard class tickets, the CPRs are also relevant here in relation to Business Premier tickets. We expect Business Premier passengers to be clearly reminded about their existing right to a full refund in any consumer notice such as cancellation or disruption communications, as well as in general information about their ticket type and rights.

eVouchers

Validity

In your letter, you have explained that the eVoucher is valid for 12 months from the date of issue and that passengers do not have to travel before the expiry date on their voucher but need to book a new journey before the voucher expires. You have told us that this effectively means that most passengers can travel up until late 2021 due to your booking horizon of approximately six months ahead of the date of travel.

We would like to understand your policy in respect of passengers who have accepted your proactive offer of an eVoucher before travel and whose service was not cancelled, but who then find that they will not make use of their eVoucher within the permitted timescale, including, for example, those passengers affected by a further lockdown or local travel restrictions. We would like to know whether you have any plans to extend the eVoucher validity period, or whether a replacement ticket which has been booked through use of an eVoucher can be further postponed or replaced by a passenger in such circumstances.

Subsequent cancellation

In your letter, you have confirmed that you are processing refunds to those passengers who originally accepted an eVoucher before their travel date and then subsequently asked for a cash refund after their service was cancelled. You have also stated that many passengers who have accepted an eVoucher are not seeking a subsequent refund when their service has been cancelled – we are currently unclear whether this is because they have actively chosen not to or because they are unaware of their eligibility to do so.

We would like you to clarify when and how passengers are informed of their eligibility for such a refund (in a consumer notice), and your policy in these different scenarios:

- A passenger has taken an eVoucher in advance of travel but has not yet booked on an alternative service; their original booked service is subsequently cancelled;
- A passenger has taken an eVoucher in advance of travel and has booked on an alternative service; their original booked service is subsequently cancelled;
- A passenger has taken an eVoucher in advance of travel or as a result of cancellation of their original booked service, has booked on an alternative service, but this alternative service is also cancelled.

We would like to know whether passengers are proactively contacted once their original service has been cancelled to ask them if they wish to exchange their eVoucher for a refund, or if this information is provided in more general terms or in earlier communications, and therefore the onus is on the passenger to identify if they are eligible and to contact you to request this.

We would also like to understand if, when passengers are proactively offered an eVoucher in advance of travel, they are provided with clear information at that time about their refund entitlement should their original booked service be cancelled.

In your letter, you have stated that you have honoured 100% of all eligible refund requests for cancelled trains. We would like to understand how many requests you have received which you have categorised as ineligible, and what criteria you have used to decide this.

Frustration of the contract

We note your position in relation to the principle of 'frustration of contract' and whether this applies to passengers unable to travel in line with Government restrictions or guidance, even if their booked service has not been cancelled. We also note that CMA has published additional guidance on cancellation and refund rights during Covid-19 which was published on 29 August.³ This supplements its guidance on the same topic, published in April 2020.⁴ In light of this guidance, we are not intending to take this matter further at this time but will continue to track the development of CMA policy in this area.

³ <https://www.gov.uk/government/news/coronavirus-covid-19-cancellation-and-refund-updates>

⁴ <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>

Summary

We continue to have concerns that passengers may be misled about or unaware of their existing contractual right to a refund, for those passengers entitled to a cash refund in their existing terms and conditions (for example, where they hold a fully-flexible Business Premier ticket or, regardless of ticket type, where Eurostar has cancelled the service). We expect you to amend your cancellation notice to include a clear reference to the contractual entitlement to a refund.

Next steps

I shall be grateful if you will respond in writing to the following points by 23 November.

- 1) Whether the cancellation email you provided in Annex 1 is currently being sent to passengers; if not, we would appreciate sight of the current email.
- 2) Whether Business Premier passengers receive a bespoke cancellation email which clearly sets out their rights to a full refund or the email which you provided in Annex 1; if there is a separate email, we would appreciate sight of it.
- 3) That you will amend your cancellation notice to include a clear reference to the contractual entitlement to a refund (and your timescales for doing so).
- 4) Your policy in respect of passengers who have accepted an eVoucher and whose service was not cancelled, but who then find that they will not make use of their eVoucher within the permitted timescale, including:
 - a) whether you have any plans to extend the eVoucher validity period; and
 - b) whether a replacement ticket booked using an eVoucher can be further postponed or replaced by a passenger.
- 5) Clarify when and how passengers who have accepted an eVoucher are informed of their eligibility for a refund, including:
 - a) whether passengers are proactively contacted once their original service has been cancelled to ask them if they wish to exchange their eVoucher for a refund; and
 - b) whether passengers are provided with clear information, at the time of being offered an eVoucher, about their refund entitlement should their original booked service be cancelled.
- 6) How many refund requests you have received which you have categorised as ineligible, and what criteria you have used to decide this.

If you have any queries regarding this letter please contact

Please note that we may publish this letter and your reply on our website.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'MC', is positioned above the name Marcus Clements.

Marcus Clements

Copy to:
Competition and Markets Authority
London TravelWatch