

Marcus Clements
Head of Consumer Policy



Scott Marshall
General Counsel
Eurostar
[by email]

15 December 2020

Dear Scott,

Refund policy during the COVID-19 pandemic

Thank you for your response to our letter of 23 October in relation to your refund policy and the way in which this is communicated to passengers during the COVID-19 pandemic.

We note you have provided further information about your refund policy and screenshots of relevant communications with your passengers in your response letter and its annexes. We acknowledge that you have recently made some minor amendments to the communications you send to passengers.

However, we continue to have concerns that the information you provide to passengers will result in some passengers being confused about or misled as to their existing contractual right to a refund. We do not consider that the amendments you have made sufficiently address the concerns we have previously set out in our correspondence with you; passengers may be misled about their existing contractual right to a refund due to a failure to provide information about these rights in a clear, prominently identifiable and timely way.

To reiterate our position, we consider the behaviour in which Eurostar is currently engaged in – despite minor adjustments - amounts to a breach of the Consumer Protection from Unfair Trading Regulations 2008 (the CPRs)¹. Regulation 3 of the CPRs prohibits unfair commercial practices. Under Regulation 3, a commercial practice is unfair if it is a misleading omission under the provisions of Regulation 6. Regulation 6 provides that 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.

¹ [The Consumer Protection from Unfair Trading Regulations 2008 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

The behaviour on the part of Eurostar with which we are concerned is the following:

- a) **eVoucher funnelling** - passengers are still being channelled onto the Coronavirus e-voucher scheme, rather than it being stated clearly that they have contractual right(s) to cash refunds when their train service has been cancelled. We note that Eurostar amended its cancellation email to all passengers on 20 November. However, we consider that this cancellation email remains misleading; it is likely to lead passengers to 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 have paid extra for a fully-flexible ticket or, regardless of ticket type, where Eurostar has cancelled the service). The cancellation email still omits clear and prominent reference to a passenger's contractual entitlement to a cash refund in these circumstances. The consequence of this is likely to be passengers not accessing the refunds to which they are entitled.
- b) **Business Premier Passengers** - under your standard conditions, some of your passengers are entitled to a cash refund, for example if they have a Business Premier ticket and wish to cancel their plans, or, as stated in your Conditions of Carriage, when their booked service has been cancelled. This should not be affected by the current Covid-19 travel issues. However, there is still a lack of clear reference to this option on any of your Coronavirus webpages. As with the above, the consequence of this is likely to be passengers not accessing the refunds to which they are entitled. 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.

By way of further example, in Annex 5 of your letter of 23 November, you set out screenshots of Eurostar's "Manage your booking" website page. At step 1, passengers are provided with just two bullet point options: to either (i) "*change your journey to a new time of date free of charge* or (ii) *claim an eVoucher for the full value of your booking which can be used to book a new journey within the next 12 months*". The option of a cash refund is not listed, notwithstanding that this is a contractual entitlement in circumstances when Eurostar has cancelled the relevant service. Instead, as set out at Annex 6, passengers are required to click the "more help" link to be taken to a webpage where a cash refund is provided as an option. We consider that this is likely to mislead passengers as to their contractual entitlements, to the extent that they believe an eVoucher or exchange are the only options available to them and as such fail to claim a refund which they would otherwise have chosen.

We are sending this letter in the hope of reaching a prompt resolution in the context of the issues highlighted above, without the need for formal enforcement action. However, if Eurostar does not resolve the issues addressed in this letter and elsewhere during our respective correspondence in this matter, we intend to use the formal powers provided to us by Part 8 of the Enterprise Act 2002. The first stage in this formal process would be an appropriate consultation between ORR and Eurostar.

I am grateful to you for your recent email and your offer to meet. We consider that in order to facilitate the timely and satisfactory resolution of this matter, it would be helpful to meet with you before 23 December to discuss these issues. Colleagues from the Competition & Markets Authority will be joining the meeting. We expect a satisfactory resolution to this matter by no later than 15 January 2021.

Next steps

I shall be grateful if you will respond as soon as possible with your availability for a meeting.

If you have any queries regarding this letter please contact

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

Yours sincerely,

A handwritten signature in black ink, appearing to be 'M. Clements', written in a cursive style.

Marcus Clements

Copy to:
Competition and Markets Authority
London TravelWatch