

Marcus Clements
Head of Consumer Policy



Scott Marshall
General Counsel
Eurostar
[by email]

14 July 2020

Dear Scott,

Refund policy during the COVID-19 pandemic

In our role as a consumer authority, we have been monitoring the policies of train operators and the information they are providing to their customers during the COVID-19 pandemic.

You will no doubt have seen that the Competition & Markets Authority (CMA) published guidance on 30 April on consumer contracts, cancellation and refunds during COVID¹. We have been reviewing train operators' ticket refund policies in this context, including those of Eurostar.

We have also received some complaints from members of the public about your refund policy and the refund methods offered. We have been in contact with the CMA and London TravelWatch who have both received a substantial number of similar complaints.

We would therefore ask you to explain the refund policy you currently have in place and the way in which this is communicated and applied to your passengers.

Eurostar's refund policy

We have seen on your website that you are providing information to passengers about the option to request a refund in the form of an eVoucher. This appears to be primarily in the circumstances where the service has not been cancelled but the passenger no longer wishes to/is able to travel²; in normal circumstances, under your terms and conditions, such a passenger would not usually be eligible for a refund.

¹ <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>

² <https://www.eurostar.com/uk-en/travel-info/service-information/coronavirus-and-eurostar-service> under 'Flexible Travel' (accessed 13 July 2020)

As such, this appears to represent a new arrangement, for the purposes of addressing Covid-19 travel issues. We note that your Coronavirus webpages are silent on the option of a 'cash' refund.

We also note that, 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 Carriage³, when their booked service has been cancelled. That should not be affected by the current Covid-19 travel issues, however, we have not seen any clear reference to this option on any of your Coronavirus webpages.

As such, it appears that all passengers are being channelled onto the Coronavirus eVoucher scheme. We have concerns that this may lead consumers to be confused 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).

We would like you to consider the above, and revert to us on what the intention of your updated conditions is; we consider that it is appropriate to amend your website to provide clearer information to passengers about the various refund options available to them.

Frustration of the contract

Further, in relation to the first type of example given above (when a passenger is unable to travel because the law or public health instructions preclude them from doing so, before Eurostar has taken any decision to cancel a service), we consider that the principle of contractual frustration is relevant. The CMA's approach to refunds is that cash refunds should be offered when the contract has been 'frustrated':

"Where a contract is not performed as agreed, the CMA considers that consumer protection law will generally allow consumers to obtain a refund.

In particular, for most consumer contracts the CMA would expect a consumer to be offered a full refund where:

- [...]
- [...]

³ Condition 32, <https://www.eurostar.com/uk-en/conditions-carriage>

- a consumer cancels, or is prevented from receiving any services, because Government public health measures mean they are not allowed to use the services.”⁴

During the current COVID pandemic, this would apply when the passenger is unable to travel in line with Government restrictions or guidance, even if their booked service has not been cancelled. We note that your standard conditions of carriage do not foresee a cash refund in these circumstances⁵, and that you are currently offering eVouchers as the only refund option in these circumstances. However, in the CMA’s view (a view which we share) the passenger is, as a matter of contract law, entitled to a full cash refund in this situation.

Next steps

I shall be grateful if you will respond to this letter by Tuesday 28 July. Please include in your response details of your current refund policy, how you are applying this, and set out how you are informing your passengers of all the refund options available to them.

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

I am copying this letter to the CMA and to London TravelWatch for their information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Clements', enclosed in a thin black rectangular border.

Marcus Clements

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>, see the paragraph titled ‘The position in most cases’

⁵ Condition 31, <https://www.eurostar.com/uk-en/conditions-carriage>