

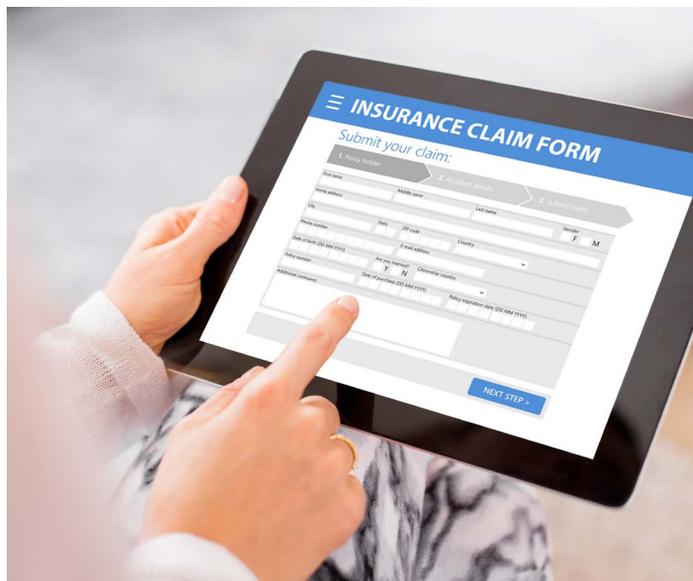
# Travel Insurance Cancellation – Disputed claims



# Travel Insurance Cancellation – Disputed claims

Unpaid travel insurance claims are very much in the news at the moment because some insurance companies are refusing to pay, disputing the terms and conditions of coverage.

Insurance companies have been taken by surprise as a consequence of the pandemic. Never before have so many travellers been forced to cancel or curtail their trip, at the same time. This unprecedented call on the insurance industry has caused them to fear the cost to them of paying out to policyholders and whilst some are honouring their contract without demur others are seeking ways to avoid the payments.



The majority of disputed claims concern cancellation or curtailment of a trip, If clients are experiencing a dispute with their travel insurer this Flaxmans factsheet will tell you what you, and they need to know.

## The main reason for not paying out

The insurance companies' main reason for not paying out their claims is that the 'travel provider', 'tour operator' or 'supplier' of the trip (different names used to mean the same thing - we shall refer to them all as 'the supplier') is 'legally obliged' to pay the customer before any claim can be made under the travel insurance policy. Is that fair?

Whether the Supplier is legally obliged to pay is a matter of fact according to the terms and conditions of the Supplier's contract (Terms of Business) with the customer. It is not a matter of just an insurer's opinion. The Terms and Conditions vary enormously as between Suppliers.

**It is not fair for an insurance company to 'pass the buck' to the customer, their policyholder, to establish the legal liability of the Supplier.**

## So, what is fair?

In most travel insurance policies there will be a Condition, usually under a 'heading' concerning 'notification of claims', that requires the Policyholder to request from the Supplier such refunds as are available according to the express Terms and Conditions of the contract with the customer.

To the extent that the T&Cs include a scale of refunds subject to the Conditions, the Supplier is legally obliged to make the refund. Where this Condition exists in the policy the Policyholder is obliged to make that request. If the Policyholder has written formally to the Supplier and asked for the refund, in accordance with the Conditions, the Policyholder usually discharges its obligation under the policy terms.

It is an ordinary implied term of a contract of insurance that a policyholder must 'mitigate its loss'. This simply means that the Policyholder must do what is reasonable and proportionate to reduce the cost to the insurer; and requesting a repayment under the Suppliers T&Cs is reasonable.

### **What happens if the Supplier refuses?**

This is where your client has the right to ask the insurer to pay the amount that has been lost (what they would have got from the Supplier if they had agreed to pay) and let the insurance company take the legal action against the Supplier to enforce the Contract between the Supplier and your client, the customer. Insurance companies have the knowledge, skills, resources and rights to do so.

### **Credit Card Recovery**

Some insurers also ask the Policyholder to make a 'Section 75' claim under their Credit Card terms and conditions. Section 75 of the Consumer Credit Act 1974 is a legal protection that was put in place in the 1970s. It means that the credit card provider can be jointly liable with the retailer if something goes wrong with a purchase that cost more than £100 and less than £30,000. Under section 75 your client is entitled to a refund if: 'The product bought is faulty; is not in accordance with its description; is not delivered as promised; or if the supplier has gone bust.'

### **Push Back**

However, there has been some push back by some credit card companies claiming that the government embargo on travel since March 23rd 2020 does not fit into any of the above headings. Consequently, there is no unanimous agreement that the Credit Card company has an obligation to pay.

If the Policy includes a term that requires to make that claim against the Credit card company before it will pay then your client is obliged to make that application as well as the refund request from the Supplier. If there exists no such term in the policy then there is, on the face of it, no reason to make that claim.

### **Travel Industry Confusion**

A further complication in this vexing matter is the confusion and disagreement that exists amongst the travel industry as to its obligations to customers in the wake of the pandemic. The industry, too, has been caught out by the scale of the demands upon it for refunds and is fighting for its life. It is understandable why it may seek to refuse refunds and direct customers to their insurers. That does not make it right or fair but it does help you understand why everyone is passing the problem up the line.

### **Summary**

1. A contract of insurance providing Cancellation and Curtailment cover is obliged to pay a legitimate claim in accordance with the terms and Conditions of the policy.
2. Provided a Policyholder has tried to reduce (mitigate) the loss using reasonable and proportionate means the insurance company should then pay the loss and make such recoveries as it wishes to pursue.

# FLAXMANS

## straight to the heart of the matter

Flaxmans are internationally recognised specialists in Claims Mediation and Resolution for Commercial and Business sector clients.

Necessary and essential to a business, insurance is all too often purchased on price and or without a detailed understanding of the cover provided, rather than as a valued and thought through requirement, inevitably leading to conflict when a claim is disputed or when insurance is declined.

Flaxmans negotiate and settle business insurance claims, and act as expert witnesses to the judiciary and courts on matters of insurance and broker practice.

Flaxmans has been officially appointed by The British Insurance Brokers' Association as its preferred partner offering its members a unique specialist Claims Advocacy Service.

The new BIBA Claims Resolution and Advocacy Service now enables BIBA members access to an initial consultation with Flaxmans **completely free of charge**.

For more information email

[brokersupport@flaxmanpartners.co.uk](mailto:brokersupport@flaxmanpartners.co.uk) or visit [www.flaxmanpartners.co.uk](http://www.flaxmanpartners.co.uk)



This guidance note is intended for information purposes only and is not and does not purport to be legal advice. Whilst all care has been taken to ensure the accuracy of the guidance note it is not to be regarded as a substitute for specific advice. This guidance note shall not be reproduced in any form for any purpose.