

Covid, Cruise Cancellations and Future Cruise Credits

Thanks to Covid the cruise industry is being decimated. Cruises are being cancelled for many months ahead and long planned holidays are being put on hold. Stories abound of guests unable to get a refund or being offered vouchers, also known as Future Cruise Credits (FCCs) or Refund Credit Notes (RCNs), instead.

So what is the legal position? Are guests entitled to a refund or do they have to accept a FCC? And what happens if the FCC expires before it can be used or a substitute cruise costs more?

As lawyers are wont to say 'It all depends'. It depends upon whether it was the guest or the cruiseline that cancelled the cruise and whether the FCC was willingly accepted or offered on a take it or leave it basis.

Cancellation by the cruise line

The starting point here is that cruises are covered by the Package Travel Regulations 2018, a legacy from the EU that is still part of UK law. The quick answer is that if it is the cruiseline that cancels because of 'unavoidable and extraordinary circumstances' then you should get a full refund within 14 days. No further compensation would be payable under these circumstances.

Cancellation by the guest

If the cruise is still scheduled to sail and the guest cancels because of 'disinclination to travel' then at first blush there is no right to a refund. However if the cancellation is made early enough then according to the cancellation clause in the cruise contract the guest may be able to recoup a proportion of the cost of the cruise. Any refund will be on a sliding scale starting with a forfeit of the deposit and working up to a full loss just before the ship sails. The problem here is that if the guest waits until the last minute to cancel and the ship still sails then they might lose the whole cost of the cruise if they don't travel.

However, according to the Package Travel Regulations, if there are 'unavoidable and extraordinary circumstances occurring at the place of destination or its immediate vicinity and which significantly affect ... the performance of the package or ... the carriage of passengers to the destination' you can cancel and don't have to pay the cancellation charges. Significant changes to the itinerary because destinations were in a Covid lockdown would fall into this category.

The difficulty here is that if you have booked a cruise departing several months in advance your right to cancel for this reason would be problematic because the situation might be different when it comes time for the cruise to depart. In the SARS epidemic in 2003 a couple took the initiative and cancelled their holiday to China and Hong Kong before the tour operator did so. It was held by the court that as they had jumped the gun they were not entitled to a refund of the cancellation charges they had to pay to the tour operator. The judge said there was still a 'flicker of hope' that the tour could have gone ahead. The irony is that a few days later the tour operator did cancel the tour and everyone else received a full refund.

What is the Government saying?

If you cancel on the basis that there is Government *guidance* on whether you should travel and the cruise is still scheduled to sail then you are unlikely to get a refund, unless the cruiseline is prepared to offer one, or more likely, an FCC. An exception to this is where the Foreign Office has advised against non-essential travel in which case travel companies who belong to ABTA will offer a full refund.

However if it becomes *illegal* to travel then regardless of whether the cruiseline cancels the cruise you will be due a refund. Technically this is because the cruise contract is frustrated on the grounds of illegality – if it is illegal for you to travel it is illegal for the cruiseline to check you in. The Competition and Markets Authority (CMA) guidance advises that you should get a refund in these circumstances. But be careful. It may be illegal to travel now but maybe not in 6 months time.

Should I take an FCC?



The first thing to say is that if you are entitled to a refund then you cannot be compelled to accept an FCC. According to the CMA a business that misleads a consumer into believing that an FCC is the only option is likely to be breaching consumer protection law. So if the cruise line makes out that the only option is an FCC that is wrong – although trying to obtain the refund is another matter altogether. The cruise lines are desperate to keep hold of your money and only give it up reluctantly.

If you are offered an FCC make sure that it includes all the relevant details: the price of the holiday; the dates; your booking reference; and, most importantly of all, if you are being offered it where you could have had a full refund, your right to a cash refund and the expiration date.

Assuming you have a choice between a full refund or an FCC there are the pros and cons. This will vary according to individual circumstances but it is important to look carefully at the conditions applied to the FCC. When does it expire? What is the 'travel by' date? Can it be extended? What does it cover? Can an FCC for a long expensive cruise be exchanged for two cheaper, shorter cruises? What happens to my FCC if the cruise line goes bust?

Many cruise lines are issuing FCCs for 125% or more of the cost of the cruise as an incentive to take one and for some guests this might be quite attractive if it has a long expiration date. As lockdown ends and vaccinations take effect cruising will commence again and the possibility of an upgrade from a balcony to a suite would look appealing.

On the other hand there are also drawbacks. For instance taking an FCC from one cruiseline might mean that you miss out on future bargains on other cruiselines when travel re-commences. Additionally you may have chosen a particular itinerary and there is no guarantee that it will be available in the future or it may be more expensive. Cash is much more flexible.

FCCs and Insolvency

Unfortunately it is not beyond the bounds of possibility that your cruiseline may go bust. If you have not accepted an FCC then the Package Travel Regulations entitle you to a refund. If the cruise includes air travel then you are protected by the ATOL scheme administered by the Civil Aviation Authority (CAA). If it is a 'no fly' cruise and the cruiseline is a member of ABTA then the refund will be administered by ABTA. Whatever happens the cruiseline must have made arrangements for you to be refunded in the event of their insolvency.

But when it comes to FCCs the position is more complicated if the cruiseline becomes insolvent. The CAA has issued guidance on the validity of FCCs, or RCNs as they call them, in the event of an ATOL holders insolvency i.e. cruiselines that sell cruises with air travel included. Broadly speaking the current position (February, 2021) is that if the cruiseline issues an RCN solely for Covid related reasons then the guest will be protected by the insolvency provisions of the ATOL scheme. But at the moment this is only for FCC/RCNs issued before 31 March, 2021 which expire before 30 September 2021 - although they are under review and these dates may be extended. If you don't redeem your FCC/RCN before then you will lose your protection.

Transferring the package

One option you may wish to explore is the possibility of transferring your booking to someone else. The Package Travel Regulations provide that you can transfer your booking to another guest who 'satisfies all the conditions applicable to that contract' as long as you pay any extra costs associated with the transfer. Of course finding someone to go in your place may be easier said than done. Why would they want to subject themselves to the risks that you are trying to avoid?

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