

FUTURE CANCELLATION POLICIES

Firstly, many thanks to all of those of you that have sent in your thoughts and comments on this.

We are trying to collate all the various ways that we can look at cancellations going forwards. The common theme is very much that the guest does need to have some skin in the game and that we have got to move on post the CMA rulings.

Once this paper has been published, we will allow some time for input, feedback and questions. We will the revise the paper from Draft.

Please let us know if you would be interested in PASC UK putting together a Webinar to follow up on this, where you could ask a panel questions about the paper when it is published, we have had some interest in this already, and would be happy to arrange this.

If interested email chair@pascuk.co.uk

This Draft Paper includes the following:

- What the CMA Ruling really says about post Covid Bookings?
- Is there a role for Booking fees?
- Is it worth considering two tier pricing, as hotels do, firm and flexible terms?
- Can we cover lockdowns in future?
- Self-insuring?
- Are there any insurance options? (e.g. NFU Mutual have an Advanced Booking Cancellation Policy)
- Look at the pros and cons of non-refundable deposits, where they may or not work?
- More work on Chargebacks
- What Guest Insurance is available?

PAPER ON CANCELLATION POLICIES & CONNECTED OPTIONS

DRAFT V.1

Context

This paper is a non-exhaustive review of the pros and cons of various cancellation options and booking fees available to owners and agents following the lifting of Covid-19 restrictions. These are intended to cover our longer term position (when we expect cancellations to again be few and far between). Pre Covid cancellations on self-catering were sub 3%. It's possible that the guests may have enjoyed the flexi cancellations during 2019 and expect similar. It's acknowledged that a flexible approach to cancellations does drive bookings, but a balance is needed to ensure owners/agents have sufficient certainty to plan their business operations.

It is though worth stating at this early stage that the number one question from guests is still... 'what happens if I have to cancel'.

When we look at that question in December 2020, it's a different question than it was a year ago, and in the vast majority of cases can be translated to... 'what happens if I have to cancel because of a lockdown?'

From now in we want to answer this question in two ways, first off, we are all aware that the CMA ruling means that hanging onto guests money in a lockdown situation is not allowed. So we can all still answer that primary question in a reassuring way, at least to the guest.

However, outside lockdowns it's not unreasonable to have fair clauses in our terms and conditions that mean that the guest does not have a carte blanche to cancel at will, at any time, for any reason, and get all their money back. This paper sets out to illustrate some of the options open to us.

PASC UK, (The Professional Association of Self-Caterers UK), Premier Cottages and the ASSC (Association of Scotland's Self-Caterers) have combined resources to produce a discussion paper on the thorny subject of guest cancellations and where it might be possible to reduce exposure to refunds as we move forwards out of Covid restrictions.

This paper is the first stage in looking at options that may be possible to reduce the risk and to find strategies and possibly even clauses for booking terms that may offer us greater protection.

A key driver that we should all consider is the guest appetite for reassurance about their booking post Covid. There is little doubt in our minds that "flexible cancellation" policies have attracted more bookings and at increased prices. It is unlikely that this will change in the foreseeable future.

However, there is simply no "golden ticket" that would represent a set of terms and conditions that will protect us and suit every business reading this paper. Currently, we have no plans to create a standard set of terms and conditions for this reason. What just might be possible, after further consultation, would be to create a "charter". This in itself is extraordinarily ambitious, the "charter" would have no value if we could not present it and convince the consumer associations of its value, whilst at the same time convincing enough businesses to sign up to it. An enormous task.

We have had some great feedback and where possible have included at least an outline of what some of you are proposing to do going forwards. What this feedback did show was just how diverse the approaches that various businesses are taking. Some offer almost totally flexible cancellation policies whilst at the other end of the spectrum some feel that they have come up with terms and conditions that mean that the guest has to pay regardless.

This is Draft 1 of a complex challenge, so we look forward to your feedback.

The Competition and Markets Authority (CMA) Guidance on the impact of COVID-19 for owners of holiday accommodation

The CMA has a number of functions but in the context of this note, the CMA's role has been to ensure that businesses treat consumers fairly when accommodation booking arrangements are impacted by COVID-19.

The CMA initially took the broad position that consumers affected by the initial (completely unforeseen) COVID-19 lockdown would be generally entitled to a refund in all circumstances, and that any terms and conditions that provided otherwise would be unfair and therefore invalid.

Moving beyond those unforeseen events to a world where guests, owners and agents are aware of tiers, self-isolation, rules of six, households, bubbles, quarantining and local & national lockdowns, the CMA has added to its guidance.

The CMA's position in relation to contracts that contemplate COVID-19 has moved on from the way it views contracts impacted by the pandemic. This note is not intended to cover bookings that did not anticipate the existence of COVID-19 (i.e. bookings made in 2019 or in early 2020). Our focus instead relates bookings made during the pandemic and beyond.

“Frustrated” contracts

There has been a lot of discussion about contracts for accommodation having been “frustrated” due to COVID-19 restrictions – and the CMA guidance attempts to summarise the legal concept of frustration and states that *“a contract will be frustrated as a matter of law if, due to no fault of the parties, something happens after the contract was entered into which means it can no longer be performed at all or performance would be radically different to what was agreed”*. In these circumstances the CMA guidance expects that consumers will receive a full refund for services paid for but not received.

Whether a contract is in fact legally frustrated will depend on the circumstances and the particular terms and conditions of that contract. It is not the case that a contract that cannot go ahead due to COVID-19 is “frustrated” if the contract anticipates and deals lawfully and fairly with that situation.

Owners having to close due to lockdowns

As at 28 August 2020, the CMA's view is that “a consumer will generally be entitled to a refund when they have paid money in advance for services or goods that cannot be provided because of the coronavirus pandemic.”

In the simplest of terms, for holiday accommodation, the “service” is the provision by the owner of the holiday accommodation. It's clear that the CMA's view is that if an owner/agent cannot provide the holiday accommodation, then the guest is entitled to a refund. This position covers where the holiday accommodation is required to be closed due to a local lockdown or national lockdown, or where the owner/agent decides not to open the accommodation; and in such circumstances, owners/agents should be offering a full refund to their guests.

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

Where owners can remain open

Where there remains some confusion is in relation to the circumstances where businesses can remain open, but for a number of reasons the guest cannot make use of the accommodation – either at all (e.g. due to coming from an area in local lockdown) or in the way that the guest might have anticipated (for example booking a cottage that sleeps 18 for a birthday celebration, but only being able to bring a smaller group due to the “Rule of 6”).

It is hard to see any successful argument that the contract is legally “frustrated” because neither party is prevented from fulfilling its obligations; the owner to make the accommodation available,

and the booking-lead (i.e. the individual person making the booking) paying the rental amount. Nothing in the rental contract imposes an obligation on the guest to actually make use of the accommodation. The CMA acknowledges that where COVID-19 restrictions amount to government “guidance” rather than “law” a contract is unlikely to be frustrated, and in these cases the terms and conditions of the contract dealing with cancellation and refunds will apply (as long as they are objectively fair).

It has always been the case that users of holiday accommodation would take the risk (or take travel insurance) to cover the circumstances that arise preventing them from travelling or making use of accommodation that they have booked. Such risks include illness or accident; missed flights or trains or car breakdowns; the requirement to serve on a jury; work commitments and incarceration (although incarceration is unlikely to be insurable).

There is no reason why illness from COVID-19, the requirement to self-isolate, and the requirement that a particular set of people may not (or are recommended not to) stay together, should be treated differently. These are not risks that an owner/agent should reasonably have to take given that the owner/agent does not (and could not in many respects) make any judgement call at the time of booking of such matters as the location, health, vulnerability or companions of the person making the booking. Should we have something in our terms to cover this?

Dealing with COVID-19 in terms and conditions

The CMA states that terms and conditions “relating to refunds and the coronavirus, as well as provisions relating to cancellation and refunds more generally, must also be clearly and prominently set out in the contract”.

This statement is important because it is an acknowledgment by the CMA that a contract can set out how a particular business may wish to deal with matters arising from COVID-19 related circumstances. It effectively overrules the “all contracts must be cancelled and monies must be returned to the consumer” approach that many owners/agents initially believed to be the CMA’s position.

The CMA states that such terms must be appropriately and clearly brought to the consumer’s attention **before** they enter into the contract. Most guests making bookings now ask specifically about the cancellation policy or the COVID policy, and it’s important that owners/agents are able to explain what their terms and conditions say and how they work in practice.

It's worth noting here that we cannot retrospectively change the terms of bookings, so the T’s and C’s in place at the time of booking apply. New terms and conditions only apply to bookings received after you have published your new Terms and Conditions.

As with all terms and conditions in consumer contracts, terms and conditions dealing with COVID-19 will also need to be objectively “fair” to the consumer. There is nothing to be gained by an owner/agent in hiding clever business-friendly wording in terms and conditions. Such an approach would not be fair on the consumer and as such, would create a risk that such a wording would be deemed invalid by a court. If that happened, a court would then look at and interpret the contract as if the unfair clause did not exist, leaving the “clever owner/agent” with a contract that does not address the circumstances faced and more likely determined as “frustrated” requiring all monies to be returned to the guest.

If terms and conditions are objectively “fair” to the consumer, and clearly outlined, then the court will apply the terms and conditions as they are written when interpreting the contract.

The CMA guidance makes it clear that owners/agents should

- (a) be clear in stating the circumstances where a right to a refund is reduced and
- (b) allow consumers to get most of their money back and only allow the business to withhold a limited amount for any costs it has already incurred in performing the specific contract.

The problem with part (b) above is that the CMA guidance is written for all consumer contracts and does not take into account that in taking an accommodation booking and blocking a property from the market, the consumer is getting something of value and depriving the owner from getting something else instead. At that point the owner/agent is performing part of the contract. The consumer is getting the guarantee of the accommodation being reserved for that particular day, weekend or week in the future; and in the world of self-catering accommodation, having a week booked well in advance is of considerable value. To the same point, when taking a booking, the owner/agent removes the accommodation from their inventory, and is unable to sell it to anyone else. If a cancellation happens a few days or weeks before the intended stay, it’s improbable that the owner/agent will be able re-let the accommodation without incurring a loss. It’s therefore strongly arguable that this second statement ought not to apply to accommodation businesses, because unless the accommodation can be re-sold, the owner/agent has lost all value.

The ever-changing guidance and regulations affecting our ability to travel and spend time with different groups of people are now a part of life, and will be in the mind of the consumer at the time of booking travel and accommodation. If owners/agents intend to treat such matters as a risk for the consumer then this should be very clearly pointed out to the consumer at the time of booking and should be clearly referenced in terms and conditions (and ideally coupled with a recommendation to take travel insurance). It cannot be right that owners/agents should have to undertake due diligence on the background, health position, place of residence or travel plans of their guests at the time of booking.

It is difficult to see how the CMA or the courts could construe such risk allocation as unfair on the consumer if the consumer is made aware of the position at the outset (in very clear terms) and the terms and conditions explain how the owner/agent will seek to mitigate its losses in the event that the consumer cancels. Such additional mitigation could include an obligation on the owner/agent to seek to re-let the accommodation (and where it is able to, to repay part or all of what has been paid by the consumer) and if it is unable to re-let the accommodation, to refund the cost that it would have incurred had the accommodation been occupied (for example cleaning, laundry and welcome pack costs), as otherwise the owner/agent would be “up” as a result of the cancellation.

Cancellations

For those who had it, the loss of Master Cancel is a blow, as it enabled us to offer flexible cancellation for (almost) any reason up to 2 days prior to arrival. Flexible cancellation has proved a valuable marketing USP in these uncertain times. While there will inevitably be speculation about a possible Master Cancel Mk 2, this will – in line with all other insurance policies – almost certainly NOT cover future incidences of global pandemics.

There is almost zero chance that we will ever have another insurance policy that allows the customer to cancel without giving a reason. Any cancellation policy will have a list of allowable reasons for

cancellation, some examples later in the paper, they won't cover pandemics and will appear more restrictive. However in a post Covid environment, they would probably cover 90% + of cancellations.

Covid has though focussed guest attention on cancellation policies. This paper is designed to un-knit those circumstances where a full refund will be required, and where it is still reasonable to charge a cancellation fee, and looks at possible ways of introducing a cancellation fee that would be likely to be deemed fair and reasonable by a court.

Your Terms & Conditions

Terms and Conditions are important as they set out the rights and responsibilities of the parties to the contract. However, **these terms cannot be unfair**. An unfair term in a contract is not binding. So be very careful about putting penalising clauses into your T&Cs. It is important to note that excessive cancellation fees are likely to be considered an unfair term.

One size doesn't fit all

It is important to make sure your terms are specifically written for your business – you can't assume another business will have the same needs as yours. While it may be tempting to just copy someone else's T&Cs, their business may be different, and they may not have taken legal advice either. Make sure that your T&Cs are suitable for your own business.

Beware the "Unfair Clause"

Just because you put something in your T&Cs does NOT make it necessarily binding. A standard term is **unfair** 'if, contrary to the requirement of good faith, it causes a significant imbalance in the parties' rights and obligations arising under the **contract**, to the detriment of the consumer'– Regulation 5(1). **Unfair** terms are not enforceable against the consumer. You can also never impose terms that avoid responsibility for death or injury (make sure that you have suitable Public Liability Insurance in place!). It is important to understand this, as an unfair clause can invalidate either all or part of your contract, leaving you exposed.

<https://www.gov.uk/unfair-terms-in-sales-contracts/unfair-consumer-contracts>

"Non-Refundable Under Any Circumstances" Clauses

Just because you include something in your T&Cs, it doesn't mean it is always legally binding. Consumers have protection under various areas of legislation. You cannot have a clause that says that payment is non-refundable under any circumstances. For example, if you get a cancellation, and the holiday is re-booked by another guest, you should restore the payment made to the original booker (possibly less an admin fee, and possibly pro-rata to the percentage you got from the new booker), but you should not just keep it all as "non-refundable".

Any clause that is likely to be considered harsh by the consumer could be challenged as unfair. The clearer you are with your guests at the outset, the stronger your argument that the guest was aware of the position (but being clear with onerous terms does not make them fair).

CMA guidance states:

- Businesses can keep your deposit or advance payments, or ask you to pay a cancellation charge, only in certain circumstances

- If you cancel the contract, the business is generally only entitled to keep or receive an amount sufficient to cover their actual losses that directly result from your cancellation (e.g. costs already incurred or loss of profit).
- Businesses must take reasonable steps to reduce their losses (eg by re-selling the goods or services).
- Non-refundable deposits should only be a small percentage of the total price.
- Cancellation charges must be a genuine estimate of the business' direct loss.

<https://www.gov.uk/government/publications/cancelling-goods-or-services-guide-for-consumers/cancelling-goods-or-services#:~:text=Businesses%20can%20keep%20your%20deposit,charge%2C%20only%20in%20certain%20circumstances&text=Businesses%20must%20take%20reasonable%20steps,percentage%20of%20the%20total%20price>

<https://www.which.co.uk/consumer-rights/advice/can-i-claim-back-a-non-refundable-deposit>

<https://www.which.co.uk/consumer-rights/advice/i-think-theres-an-unfair-term-in-my-contract-what-can-i-do>

When You Cannot Charge

If YOU (the owner/agent) cancel the guest's booking – due to unforeseen events at your property (fire, flood, illness, closure of the property etc) or overbooking by you – you should refund the guest in full. Unforeseen events at your property ought to be covered by your Business Interruption insurance, but in any event, if you cannot provide the accommodation, it is difficult to think of any circumstances where anything other than a full refund to the guest would be lawful.

CMA Position on Refunds (ex Covid)

- Businesses are entitled to ask customers to pay a fee if they cancel – or to keep some of an upfront deposit – to cover their losses. But the amount they keep must be in proportion to what they are actually losing as a result of a cancellation.
- Terms and conditions that don't follow this approach – for example, where the business keeps a large upfront deposit which bears no relation to its losses – are likely to be unfair. As a general rule, deposits in these circumstances should only be a small percentage of the total cost.
- In practice this means that if a guest cancels a booking and the business resells it, the guest should be entitled to some money back. Travel firms can either use a case-by-case system, where people are refunded if and when a replacement booking is made, or they can have general terms and conditions based on how likely it is that they will be able to resell any cancelled bookings as the date of the booking approaches.

<https://competitionandmarkets.blog.gov.uk/2019/06/27/holiday-deposits-and-cancellation-fees-are-you-being-treated-fairly/>

<https://www.which.co.uk/consumer-rights/advice/can-i-claim-back-a-non-refundable-deposit>

Historically, most of us will have had some version of a “refund if rebooked” cancellation policy. Many larger OTAs and operators use a sliding scale of refunds depending on the notice period of the cancellation date relative to the holiday date.

Make the booking contact with a single person.

It is also preferable, as far as possible, to make it clear in your terms and conditions that the booking is with a single person for the property (the "lead booker"). It's not a "holiday for 6 or 8 or 20 people". It's not a booking to a "group of people"; there is one contract and your contractual obligations are owed to one person. The transaction is the letting of the property to the lead booker to use the property subject to your rules on maximum occupancy (and other terms of use). Your terms can of course provide that those nominated by the lead booker may also stay in the cottage provided that they comply with your terms of occupancy/use.

Booking Terms with third party booking sites (OTA's AirBnB, agents etc)

If you take bookings from any of these sources you are subjugating your T's and C's to theirs. If the booking comes from AirBnB, their T's and C's apply. In respect of cancellations and payments, ours play no part in the booking process at all (although, for example with AirBnB, you are entitled to impose "House Rules" which allow you to deal with the operational aspects that are often contained in Ts and Cs).

The only way to have command of your own Booking Terms is to only take direct bookings. This paper will not go as far as to advise on all platforms' differing T's and C's.

Time-defined Refunds

This works on the principle that the further away from the delivery of a holiday the cancellation takes place, the higher the likelihood that the provider will be able to rebook the holiday, so the penalty for cancellation increases as the "time to resell" shortens. The time parameters may vary depending on the type of property you have. Lead times for large properties tend to be longer, and they tend not to get booked at short notice, so it may be reasonable for them to retain a higher percentage for a longer cancellation period than (say) a sleeps-2 cottage. Some of the cancellation charges in the market appear to be quite onerous (Cottages.com charges 50% of the total from 57 days out, increasing to 95% at 7 days or less). If you are trying to attract bookings by having a flexible cancellation policy (for any non-Covid related cancellations) then you may well want to have more generous refund rates.

It is worth remembering that while we all want to have more direct bookings, and avoid the fees charged by the OTA platforms, it may well be that the flexible cancellation policies offered by the likes of AirBnB and Booking.com (with free cancellation up to 2 days before arrival as standard in many cases) are a big part of the reason that guests use them.

Note that even the AirBnB "Strict" policy gets a 50% refund if cancellation takes place more than 7 days prior to arrival. They also have SuperStrict 30 and SuperStrict 60, where the guest gets 50% refund if cancelled >30/60 days before arrival, and zero refund if <30/60 days arrival (AirBnB's own service fees are not refunded in any scenario).

It would be possible to have fairly flexible terms depending on time prior to arrival, for example, Free cancellation up to 7/14/21/28 days beforehand. Possibly less "admin fee".

e.g.

If cancel >28 days (say) before – full refund (maybe less admin fee?)

If cancel 14-28 days before – 75% refund (percentage tbc) (unless rebooked)

If cancel 7-14 days before – 50% refund (unless rebooked)

If cancel < 7 days before – 25% to zero refund (unless rebooked).

In all cases, best practice would always be a full refund if rebooked before arrival date (maybe capped at rebooking rate) and possibly subject to a cancellation fee.

Cottages.com group example

Cancellation charges

Number of days before the start date of your trip that we receive your notice to cancel (or on which you are deemed to have cancelled)	Cancellation charge (plus all booking fees, any insurance premiums or administration fees you owe)
More than 70 days More than 84 days (properties stated to sleep 10 or more people)	Full deposit (including any balance of the deposit due)
57 to 70 days 57 to 84 days (properties stated to sleep 10 or more people)	50% of the total cost or full deposit (including any balance of deposit due), whichever is greater.
43 to 56 days	60% of total cost
29 to 42 days	75% of total cost
8 to 28 days	90% of total cost
7 days or less	95% of total cost

Pros

- Lower risk to owner/agent
- Better reflects rebooking risk
- Historically guests have been happy to share the risk. They don't tend to book stays in self-catering that they don't intend to take
- It focuses the mind of the guest that if they are going to cancel, the earlier they do it, the better.
- Where cleaning, laundry and welcome pack costs are high the 10% / 5% returned to the guest is probably not far off the equivalent of receiving the full amount for the stay if those costs do not need to be expended.

Cons

- Not particularly "flexible"
- Could lead to holiday-banking of early bookings (i.e. book & cancel culture) and subsequent cancellations (could be mitigated by a booking fee)
- Confusing to operate for guest and owner/agent
- Guests may still issue a chargeback on their card to recover the lost payment

Two-Tier Pricing (Standard vs Flexible)

This is where two different tiers of pricing are offered – refundable, and non-refundable, with the refundable option attracting a price premium. As an example, typically on Booking.com the accommodation is able to be cancelled up to between 7 and zero days before arrival (booking example below is for arrival on 13th November, and can be cancelled up to midnight on the 9th) and the premium ranges from 7% to 11.11% of the non-refundable price. Many operators ONLY offer a flexible cancellation price (no discount for non-refundable).

Example:

<p>Deluxe Double Room</p> <p>● Only 4 rooms left on our site</p> <p>1 double bed </p> <p> 194 feet²  Ensuite bathroom</p> <p> Flat-screen TV</p> <p>More</p>		<p>£940 ⓘ</p> <p>includes taxes and charges</p>	<p> Fabulous breakfast included ⓘ</p> <p>✓ FREE cancellation before 23:59 on 9 November 2021</p> <p>✓ NO PREPAYMENT NEEDED - pay at the property</p>	<input type="text" value="0"/>
		<p>£846 ⓘ</p> <p>includes taxes and charges</p>	<p> Fabulous breakfast included ⓘ</p> <ul style="list-style-type: none"> • Non-refundable 	<input type="text" value="0"/>
<p>Penwith Four with Sea View</p> <p>● Only 1 room left on our site</p> <p>1 double bed </p> <p> Sea view  Ensuite bathroom</p> <p> Flat-screen TV</p> <p>More</p>		<p>£1,010 ⓘ</p> <p>includes taxes and charges</p>	<p> Fabulous breakfast included ⓘ</p> <p>✓ FREE cancellation before 23:59 on 9 November 2021</p> <p>✓ NO PREPAYMENT NEEDED - pay at the property</p>	<input type="text" value="0"/>
		<p>£909 ⓘ</p> <p>includes taxes and charges</p>	<p> Fabulous breakfast included ⓘ</p> <ul style="list-style-type: none"> • Non-refundable 	<input type="text" value="0"/>

Pros

- Premium for flexibility allows owners to “self-insure”
- Customer has made a commitment to opt for a non-refundable booking
- Policy is upfront and clear
- Flexible rates are a useful way to earn extra revenue from bookings where the guest does not cancel
- Very difficult for a customer to argue that they ought to be entitled to something else should they need to cancel.

Cons

- Premium required may deter bookings
- Competitive offers with Flexi bookings may be considerably cheaper
- Still need to refund if rebooked
- We are hearing that Chargebacks are still be successfully made against Hotels for non-refundable bookings even outside restrictions.
- Unless a substantial premium charged, it cannot really be described as covering the self-insuring risk

Charging non-refundable Booking Fees

A deposit is just an advance sum paid to reserve the services due to be rendered. This is not the same as a booking fee, which may be deemed to be a disbursement to cover expenses incurred during the booking process. This may include card processing charges for the initial payment and the cost of refunding. It is likely to be only a small percentage of the total price.

These have commonly been used in the past by agents so that a proportion of the total selling price was retained by the agent and in the event of a cancellation was not refundable.

These may have a role going forwards but it is clear that they really can only cover “real costs”. You cannot decide that the booking fee is 25% of the total fee without being able to justify it.

They also need to be considered in the light of the rest of your cancellation policy. If you are offering some kind of flexi cancellation, and the guests can cancel fairly freely, then it might well be a sensible option to have a non-refundable booking fee, as high as can be justified, in order that they have some “skin the game”. It would go some way towards stopping some guests thinking that they can find a another property and cancel yours.

Whether you add the Booking fee to the amount that you are charging now, or reduce the rental and add in a booking fee to bring it back to the original price is for owners to decide themselves. We would suggest that £50 would be about the starting point.

You could look at using a percentage, with around 7-8% being the top end, AirBnB charge 12% but you still have to look customer friendly, and possibly tie this in with flexi dates cancellations policy.

If you are on SuperControl you can still show the total price on your website and partner platforms, and the booking fee appears as part of this in the itemised breakdown at point of booking.

Otherwise there really is no skin in the game or deterrent to just cancel from the guest perspective.

Analysis of agency SuperControl clients shows an average of 6.6% booking fee (where this is charged as a percentage of rent). So a 6% non-refundable booking fee on an average £850 booking would be about £50. This seems like a reasonable cost of processing a booking and subsequent cancellation

It is highly likely that we will see many more businesses charge booking fees now that the CMA has said that if they are reasonable, they are non-refundable.

We do not think though that they are the route to ‘self-insuring’ as many have suggested. This is because:

- You could have charged the amount with the booking fee anyway, so you are not actually gaining any revenue, or building an additional reserve.
- You only get to keep the booking fee on bookings that cancel, so a small amount if not re-booked.
- Do not think of the booking fee as self-insurance against cancellations. It is purely a way to offset costs involved in processing cancellations as well as being a deterrent to guests cancelling.
- Some owners/agents charge a Cleaning Fee but not a Booking Fee for similar percentage. Recommend that the Cleaning Fee is changed to a Booking Fee. You cannot justify holding a Cleaning Fee for a property that you will not clean.
- You can also opt for a fixed Booking Fee rather than a percentage. We would suggest that a percentage is more appropriate. The costs of processing a booking are often in proportion to its value.

Pros

- Owner/agent can cover real expended costs in event of cancellation
- May reduce cancellations in normal trading times
- Many agencies and some OTAs already charge this type of fee. Guests are used to paying it.

Cons

- Not considered a full refund by guest
- Doesn't build any kind of 'fund'
- Still the risk of chargebacks even on this Booking Fee
- The published prices on PC and websites are no longer the true prices because extras are being added on – which is not great clarity.

Self-Insuring

This is something of a misnomer in self-catering terms. If you are self-insuring you are in effect taking ALL the risk. If you have put the price up to build a pot to cover any cancellations on this basis, you could have put the price up anyway. So again, you have not actually built any additional fund. To actually build a fund you would need to charge extremely high prices over and above what would be the 'market' price.

The risk on self-insuring is also affected by the kind of property that you have. If you have a sleeps 2 overlooking a picturesque harbour with parking, you can probably book again if you get a cancellation 7 days out. If you have a sleeps 30 in a remote area, that is just not possible. The amounts of money for each booking are substantially different too.

As can be seen in the Cottages.com cancellation policies above, the cancellation terms for larger properties are harsher than for smaller ones.

However, Covid has shown that guests are willing to pay more for flexible cancellation terms. If you are willing to take the risk on cancellations close to the arrival date you are likely to be able to charge more, perhaps significantly more. This isn't "self-insuring" as such, but it is a way to potentially make more revenue across all of your bookings.

Keeping the deposits and balances in a separate Bank Account

A large number of Members fed back that this was a key part of their strategy going forwards. This is where the property owner has an additional bank account, into which the payments from guests are made. This money is held in this account until a given date. This might be:

- When the booking is completed
- When the hard non-refundable date is reached
- If you need to refund a guest the money is there

The monies are then transferred to a trading account. Having the money in such an account has some other benefits too.

- If you are planning on selling in the not too distant future, all monies for bookings beyond the date of exchange are the new buyers bookings as they have to deliver the service. A calculation on sale is the final price less forward bookings. Having a 'client account' would mean that the final sale price would be all ours.
- This would reassure a buyer of the property
- We are not suggesting that this is a legal Client Account, in the same way that Solicitors have, as this would have all kinds of regulatory compliance issues. This just keeping the funds separate until such time as we are 100% sure the money can indisputably claimed as ours.

Many agents operated on this basis pre-Covid and many more are now moving to a similar model, by which they only pay the owners on completion of the booking and only take their commission at this point.

Insurance Products

1. Guests purchase Cover

This is a slightly tricky area, as we are not allowed to sell insurance or make recommendations. Policies like Booking protect and Refund Protect have found ways around this, but in general terms recommending your local broker or a policy is not allowed.

What would be allowed would be to recommend that the guests seeking insurance used sites such as the following to choose their insurance.

<https://www.which.co.uk/money/insurance/travel-insurance>

We are checking to see how far any recommendation can go, however we think that it is unlikely to be breaking any FCA rules to say on your website... 'here are some suggestions as to where you may find travel insurance, we are not allowed to recommend any particular policy, so please check these out yourselves. Followed by the link above and perhaps the Trailfinders one below'.

2. Guest incentive to take out Guest Insurance

Several suggestions have been made by Members that we could consider offering guests say a 5% discount on their bookings if they showed that they had taken out the relevant insurance.

One problem is that 5% off a £400 wet weekend in January is only £20 and is hardly an incentive, and 5% of a £5,000 booking is possibly more than a decent policy might cost.

The workings of this would need to be thought through, whilst it looks like a reasonable idea on the surface, it's probably not practical to have owners/agents checking to see the policies that guest have taken out, and it may complicate the legal position on the booking.

The danger in offering a discount to a guest that has taken insurance is almost implying that if the guest is not insured, the owner somehow has liability (which it ought not to be – and if it is, then the insurer will come after the owner!).

3. Obliging Guest to take out Guest Insurance

We are not convinced that a condition that requires a guest to have taken out travel insurance in order to make the booking / comply with your terms and conditions would be seen as reasonable.

However, a clear statement at the point of booking / in the terms and conditions that indicates to the guest that they ought to take out travel insurance to cover the risks that are considered to be “guest risks” is strongly recommended.

4. Booking Protect and Refund Protect

Products like [Booking Protect](#) and [Refund Protect](#) let you offer an upgrade to guests which makes their booking refundable if they cannot attend for a number of specified reasons.

While these products are underwritten by insurance they are structured so that property owners or agents are not directly selling insurance to guests.

If the guest has to cancel they apply directly to the provider for a refund. They will receive a refund if they are able to provide evidence that their cancellation was caused by a specific covered reason. For example:

- Illness or injury
- Accident
- Death
- Adverse weather
- Vehicle failure
- Redundancy

The products may cover illness caused by Covid but are not likely to pay claims cause by the inability to travel because of lockdowns.

These products cover the guest directly and not the owner or agent. The guest must opt in to receive cover, usually as part of the booking process. Because the guest must opt-in it can be complicated to provide cover for OTA bookings where there is a more distant relationship with the guest.

The guest will only be refunded what they have paid. For example, if they have only paid a deposit then this is what they will be refunded. So, in this example the owner / agent would only receive the deposit payment for the booking. However, many cancellations caused by these type of reasons happen just prior to arrival and the guest will have paid the full balance.

Typically the owner or agent’s terms would be need to be non-refundable and encourage guests to purchase the refund protection to cover themselves against cancellation.

Check that cover is per-person and not per-booking. It may be the case that if some members of a larger party are not able to travel then the refund will only apply to those guests.

Usually the refund protection product needs to be integrated with the Property Management System or Booking System and cover is opened over an API.

The products listed above have an excellent track record of paying claims but were not designed to protect against Covid lockdowns. They are an great way to give guests peace of mind for the majority of typical cancellations but are typically associated with non-refundable terms and conditions.

Always worth checking on these kind of policies as to the term and the cancellation period. Many other policies will be coming in the months ahead. The Booking Protect has a 3-year contract, with automatic rollover for a further 3 years unless you cancel within a VERY specific window. A "Pro" is that if you integrate it into your SuperControl, you receive a (from memory 30%) selling commission on each policy sold.

Pros

- In normal times these products claim to cover a high proportion of genuine cancellation reasons
- In some cases there is an opportunity for the owner to earn a share of the fee paid by the guest
- Transfers the responsibility of protecting against cancellation to the guest

Cons

- Difficult to use with OTA bookings
- Isn't a way to offer flexible terms, rather a way to protect stricter terms
- No Covid lockdown cover (but nothing will cover this)
- Will only cover against a defined set of reasons – the guest could still revert to a chargeback if the policy won't pay

5. TrailFinders

This travel policy has been put forward by several members have recommended it.

The Trail Finders policies (single trip and annual) cover UK trips, just so long as there is a minimum of two nights' accommodation booked.

There won't be any cover for medical expenses in the UK as we have the NHS, but otherwise the cover is the same.

The policy can be purchased online very quickly by visiting www.trailfinders.com/insurance. Our guests can also call our insurance hotline on 020 7084 6510.

They will speak directly to a Trailfinders travel consultant, as their consultants are trained to sell travel insurance. Guests can also visit any of our 35 travel centres located through the UK.

www.trailfinders.com/contact.

6. Owners Purchase Cover

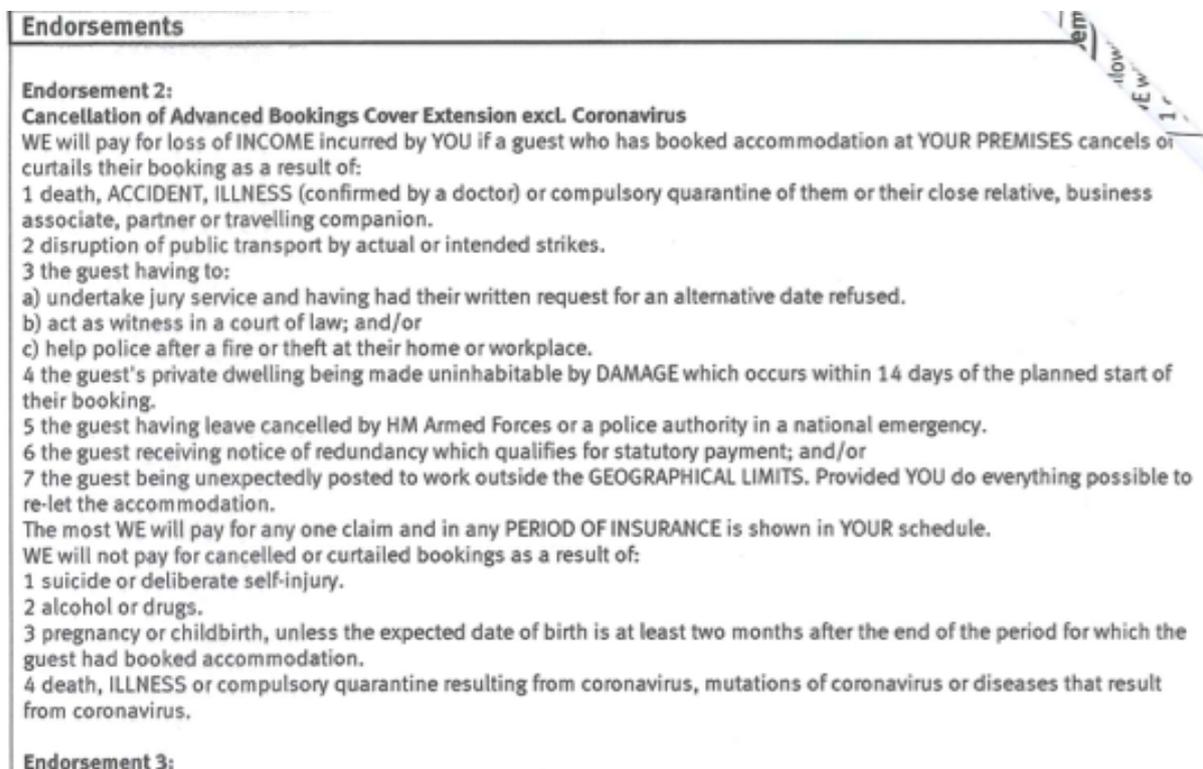
These are policies that we as owners can purchase ourselves to protect against guest cancellation. We are very keen to hear if there any others than we include here.

1. NFU Mutual Cancellation Advance Bookings (CAB)

This is a policy that gained a good reputation through the crisis. Since that time, they along every other insurer we know have removed any kind of pandemic cover, but it is still a useful policy addition. It is currently only available to NFU Mutual policy holders.

We have been in talks with other brokers to see if a similar product can be offered by them, and will publish any details as soon as we have them.

This is the cover offered by NFU Mutual, we have several conflicting versions of this document, one says in in top line that will pay out on loss of INCOME, and another says loss of PROFIT, so worth checking. Some versions also cover pregnancy and childbirth, so as always with any policy, read the small print.



This may vary from policy holder to policy holder but it appears that the cover is as follows:

The most WE will pay for any one claim is £1,500

The most WE will pay in total for any PERIOD OF INSURANCE is £15,000

An example additional premium is: The premium is charges at £19.60 per letting room. If you wish to add the cover then please could you let me know the total bedrooms you let out as holiday accommodation"

The holiday accommodation cover is part of the **Home & Lifestyle Insurance** and, as far as we know, is **only** available as an add-on to a home insurance policy with cottages being on the same site as the home. The cottage cover is for buildings and contents plus the optional "Cancellation of Advance Bookings". The extra premium has been quoted around £60 per cottage (for the cancellation cover) for a three bedroomed cottage, but you would need to get your own quotes.

Some Members had this cover and it was only for one cottage/unit, some had the cover for each of their cottages/units and were able to claim up to £15,000 per cottage/unit.

Pros

- Discrete from guest until evidence required for refund.
- Inexpensive
- Good for most booking values

Cons

- Only available from one provider
- Not high enough value cover for larger properties or multi-bookings

Conclusion

Collating all your inputs and gathering all the necessary information into this draft paper has been a much bigger task than we thought when first announced it. This clearly illustrates just how complex the picture is when you have to consider what's legal, guest expectations and competitive pressure. The elephant in the room is still chargebacks. And we will get to a paper on them, which is likely to be as complex as this one. However, in order to have any chance of fighting chargebacks you must have your booking terms in order and they need to be fair.

We are asking each of you to read the paper and think about the options offered, and let us have your feedback, your pros and cons, so that we balance all the factors when writing the summary paper and holding the webinar.

Thank you.