businesscompanion
trading standards law explained

Part 5. Payment surcharges and credit cards

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Payment surcharges

Whichever methods of payment a business accepts, there are costs associated with handling and processing the payment. Most businesses treat these costs like any other costs, and they simply set prices at a level that is intended to generate an acceptable return or rate of profit.

However, in some cases, businesses have sought to cover or offset the cost of accepting certain payment methods by imposing surcharges on consumers who choose to use those payment methods.

The Consumer Rights (Payment Surcharges) Regulations 2012 state that holiday and travel businesses are not permitted to impose surcharges for taking payment by a consumer debit or credit card, or an electronic payment service (this electronic payment service is usually some form of digital financial instrument, such as PayPal) that is backed by a bank or an intermediary. The ban on surcharges does not apply to commercial debit or credit cards.

Businesses cannot impose any surcharge for using the following methods of payment:

- consumer credit cards, debit cards or charge cards
- similar payment methods that are not card-based (for example, mobile phone-based payment methods)
- electronic payment services (for example, PayPal)

Businesses can make a charge for accepting a payment by any other method - for example, cash, cheques, standing orders and direct debits.

However, under the Regulations, if the consumer must pay a surcharge for using a particular method of payment, then that surcharge must not be more than it costs the business to process that method of payment. The Regulations do not specify any maximum amounts as the costs should reflect the actual cost to the individual business of processing the payment.

A business can apply the payment surcharge based on the average cost incurred in processing payment by a particular means.

Where a surcharge is made for any payment method, this information must not be hidden. Under the Digital Markets, Competition and Consumers Act 2024 (DMCCA), businesses must not give misleading

information to travellers, nor may they hide or omit information that the traveller needs in order to make an informed decision.

It is important to clarify that the Regulations only apply to charges for using a particular method of payment. Businesses are still permitted to charge other fees (such as delivery fees, booking fees or administrative fees) as long as these are the same irrespective of the payment method. For example, a booking fee that is £10, or is 10% of the total price, regardless of whether payment is by cash, debit card or another method, is not a payment surcharge and is not covered by the Regulations. Note, however, that the price of holiday or travel services, must be quoted inclusive of any non-optional surcharges wherever they appear and always before the traveller takes any action towards making a booking.

These rules relate to all bookings, irrespective of where or how they take place. They therefore include contracts concluded on business premises (for example, a travel agent), contracts concluded away from business premises and those concluded at a distance (for example, a purchase by telephone or via websites, Facebook etc).

Travellers are entitled to seek redress and a refund if asked for a payment surcharge that is banned or is more than allowed by the Regulations. This right applies whether enforcement action has also been taken by Trading Standards services.

The use of credit cards

Under section 75 of the Consumer Credit Act 1974, the credit card company is jointly and severally liable for any breach of contract or misrepresentation by the organiser.

This will mean that the credit card company it is just as responsible as the organiser for the service supplied, allowing consumers to also put a claim to the credit card company. They do not have to reach a stalemate with the organiser before contacting their credit card provider; they can make a claim to both simultaneously, although they cannot recover their losses from both.

Section 75 of the Consumer Credit Act also applies to foreign purchases, as well as holidays and travel bought online or by telephone. For these protections to apply the purchase must be over £100 but under £30,000.

To make a claim under section 75, the consumer doesn't need to have paid more than £100 or the full amount on their credit card; the card company is liable even if they made only part of the payment (a deposit, say) on their card.

It's the value of the travel service they are buying that is key, not the amount paid on the card.

For example, if the consumer booked a hotel and paid a £60 deposit with their credit card and the balance of £420 by cheque, they would be covered for the whole £480 if the hotel went out of business.

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