



Inland Boat Hire Conditions and COVID-19

This document advises members what the legal position is on cancellations due to COVID-19. This advice is only applicable to members that have used the British Marine template [BM10 Inland Boat Hire Conditions](#).

This advice is intended to advise our members of the legal position regarding hire boat cancellations as a result of COVID-19.

- 1) To what extent can customers try and back out of the contract by claiming they are affected by Coronavirus (and what right do they have to compensation)?
- 2) What might happen to a hire company if they are affected by Coronavirus (e.g. all of their staff are ill or the Government imposes a lockdown or quarantine)?

1) Cancellation by customers

On the first question the contract is quite restrictive on how and when a customer can try and cancel the contract and/or claim compensation.

Clause 5 sets out the Cancellation Policy for customers. It provides that the contract can only be cancelled in accordance with these Boat Hire Conditions and that the customer must give written notice to cancel. The date of receipt of the cancellation notice shall be the effective cancellation date.

Clause 5.3 sets out that the Company may charge a Cancellation Charge depending on when the customer cancels. This is a sliding scale from loss of the deposit down to payment of 100% of the price.

There is no ability under the contract for a customer to cancel the contract because of illness or events beyond their control.

This is the strict legal position and the hire companies may want to be more flexible in case of any risk of any adverse PR backlash.

Some contracts have a force majeure clause which often says that both parties don't need to perform the contract if there are events beyond their control. Please note that there is no such clause which gives the customers the ability to say they can't perform the contract because of a force majeure event or events beyond their reasonable control.

2) Cancellation by the hire companies

The contract does contain a clause which is similar to a force majeure clause. Often these will be very detailed clauses and some contracts where "epidemics and pandemics" are actually specifically listed as being a potential force majeure event which means that the contract can't be performed.

Clause 18 sets out an exclusion and limitation of liability clause. It provides that:

18.1 The Company shall not be liable to pay any compensation, damages, costs or expenses for any claim arising from any cause beyond the Company's reasonable control which could not have been mitigated or avoided by the Company including but not limited to:

Whilst this clause does not actually list out epidemics or pandemics it would potentially cover a situation where a customer was trying to claim compensation because the hire company could not perform the contract because of the virus if for example the Government had imposed a travel ban or lockdown.

This clause would potentially mean that the hire company could argue that they would not need to refund or compensate customers if they could not fulfil the contract. This would however be quite a high bar for the hire company to have to meet and it should not be one that they seek to rely on lightly. It probably would go beyond just having a couple of staff off sick. Each case will very much depend on its circumstances. Please note that the wording highlighted in red also provides that if the cause couldn't be mitigated or avoided by the Company. This would probably mean that the Company would need to demonstrate it had taken steps to try and avoid or limit the effects of the virus.

There is another clause which the hire companies could seek to rely on if they wanted to cancel a customer's booking because of the virus:

- Clause 4.5 provides that the Company can decline handover for safety reasons. This is probably a broad interpretation of the contract but if a customer had said they were affected by the virus or had turned up and clearly were affected then the hire Company could cancel the booking and refuse to hand the boat over. They would need to act reasonably here and they shouldn't act on this clause.

For more advice members should contact our legal helpline on 01455 255 228 quoting the British Marine access code 73503. This service is provided by Epoq and offers British Marine members legal advice.