

## **runbritain – Race Organisers Guidance Note**

As the Covid-19 epidemic continues so does the impact on everyday life, the situation is fast changing with the UK government now offering daily updates on the situation and issuing new guidance for citizens on a daily basis. This is having an increase of all areas of life including sport with the latest guidance that individuals practice 'social distancing' and mass gatherings are effectively "banned", being discouraged in England & Wales and Scotland by government guidance.

This approach to mass gatherings along with a number of high profile Covid-19 cases in the sporting world has led to the postponement of most major European sporting events, leagues and large sports gatherings, with the UK largely following suit for the foreseeable future.

As the world of sport reacts to the new reality many questions are now being asked as to what happens next. For example, what happens when a sports event gets cancelled as a result of Covid-19? What happens to participants who have paid for entry to an event if that event is cancelled?

There is no "one size fits all" answer to this question. The rights of entrants will depend on the individual terms and conditions issued by the individual race organisers. One set of terms and conditions used by an organiser may require refunds to be issued, but another organiser's terms may not have an express entitlement to receive a refund, which on the face of it, may offer more flexibility, but in reality, the absence of provisions on refund is a problem in law, for the event organiser / ticket seller. However, there may be a way to consider creative solutions to the initial difficulty posed by having to issue refunds, as in practice, options may be available to organisers in dealing with this unprecedented situation.

### **What do your T&Cs say?**

Whether entrants / ticket holders are entitled to a refund if a race is cancelled or postponed will depend primarily on the terms and conditions of the entrance, published in the offer for sale of the entry / ticket. Any of the terms and conditions could be relevant, including anything published on any advert, any leaflet, information sheet, or website, at the "point of sale".

If, for example, the "terms and conditions" said nothing about refund or postponement or exchange, e.g. they are silent on what happens if the race does not go ahead, then there will be a right implied by law to receive a refund.

If, on the other hand, the terms and conditions expressly exclude entitlement to a refund and offer something different, such as access to a rearranged date taking place at a reasonable time in the future, then there will be a stronger basis for the race organiser to resist any request for a refund, as they can seek to apply the terms and conditions of sale.

If a ticketing agent has been used (for either the entrant or spectator), the T&Cs are between the ticketing agent, if one has been used, and the entrant or spectator. However, it's also important to consider the T&Cs that the race organiser has agreed with the ticketing agent, if one has been used, and what these say about cancelling or postponing the race. In many cases, it may be up to the ticketing agent whether a refund is issued.

### **Potential Solutions**

There has been some discussion on rescheduling races to help minimise the number of refunds. It could be an option for a race organiser to offer the choice of entry for a rescheduled date or a refund, and as a practical solution, this could be pursued irrespective of the terms and conditions. However, not only is rescheduling a race difficult, it could raise the question of whether someone would be entitled to receive a refund if they can't attend the new date. A race organiser with the right to reschedule (etc) might take a bullish view on whether to stick to their terms and conditions, or offer a voucher to use for a race the year after the rearranged event, in lieu of the rearranged event, to the entrant who cannot attend the rearranged event.

By way of example, Public Health England has issued advice against mass public gatherings and the UK government has echoed this. A race organiser announces that, in light of this, an annual race is being 'postponed' until 2021 due to coronavirus. The ticketing terms and conditions entitle consumers to a refund if the event is cancelled. The organiser advises customers that tickets for the 2020 race will simply be valid for the rescheduled date. Practically, from a consumer perspective, this would likely amount to cancelling the 2020 event (albeit the t's and c's would need to be verified), but consumers would likely be entitled to receive a refund of their ticket notwithstanding what the ticketholder has said.

It would be hoped that entrants will display a degree of understanding given the current unprecedented situation. Race organisers could come up with creative solutions in a bid to dissuade entrants from demanding refunds. Apart from the obvious carry over of entry to any rearranged event, race organisers could offer discounts to future events or allow transfer of race entrance to another individual, subject to applicable notice. Hopefully, once the pandemic passes, people will be keen to resume as many activities as they reasonably can.

Court action is probably less of a concern than reputational difficulties; organisers should consider a strategy and try to stick to the strategy consistently and with clear communication. The courts are slowly grinding to a halt and if an organiser simply could not pay, or decided not to pay, then the holder of the entry would need to raise a claim in the courts for recovery of their payment.

Race organisers may also wish to look for government and business support if any is made available, that they can access.

### **Force majeure?**

Until such time as it is outlawed to have public gatherings (made illegal as a matter of law), the decisions being taken to cancel races, etc, are further to guidance only and so are being made at the instigation of the race organiser themselves. This means that there is likely to be no possible way to safely rely on force majeure in any dispute or enquiry about ticket refund.

Similarly, it is unlikely that insurance will help the organiser, but they should check whatever insurance they have – and preferably before any action is taken.

### **Legal status of race organiser**

Not all race organisers will be constituted in the same way; some will be limited companies, others will be companies limited by guarantee and others will be clubs and associations, possibly even sole traders. The ultimate potential impact will be different on a limited company than it would be on a local athletics club and therefore there may be ultimately different considerations for different organisers.

Shareholders in limited companies will typically not be personally liable for any of the debts of the company, other than for the amount already invested in the company and for any unpaid amount on the shares in the company, if any. If a significant demand for refunds is likely to cause financial issues then in the first instance, limited companies suffering (or anticipating) such difficulties should consider proactively engaging with creditors and other stakeholders with a view to negotiating short term breathing space and ensuring the business is able to continue trading, or, indeed a capital injection would be needed or insolvency considered.

That may be true also for sole traders or clubs and associations, but the mitigation measures will only go so far. Ultimately, if a refund is due and is not paid, then an action for repayment could follow and a number of actions would create significant personal liability.

Race organisers need to look to alternative solutions, for if no express entitlement exists to a refund, entrants and spectators may still expect to receive a refund. The funds received may have been spent; the challenge to meet all of the requests may be too great. And the organiser will wish to ensure that, in these difficult times, they seek to maintain goodwill with entrants and spectators.

### **Government Support**

The Government announced on 17 March support for businesses through the Coronavirus Business Interruption Loan Scheme. A new temporary Coronavirus Business Interruption Loan Scheme, delivered by the British Business Bank, will launch next week to support businesses to access bank lending and overdrafts. The government will provide lenders with a guarantee of 80% on each loan (subject to a per-lender cap on claims) to give lenders further confidence in continuing to provide finance to SMEs. The government will not charge businesses or banks for this guarantee, and the Scheme will support loans of up to £5 million in value. Businesses can access the first 6 months of that finance interest free, as government will cover the first 6 months of interest payments. This system may assist race organisers in meeting some costs associated with cancellation or postponement of races where a large number of entrants are seeking refunds from the race organisers.