

Managing your Covid-19-impacted ski trips now and in the future

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21 January 2022

The issue of Covid-19-impacted school ski trips is once again causing schools much difficulty as we near the peak of Europe's ski season. As the Omicron variant sweeps across much of Europe, many nations have implemented stringent travel restrictions for travellers seeking to enter their country. This has caused problems for the many schools that booked trips at a time when the global travel landscape was much different.

As we have been advising a number of schools on their Covid-19-impacted ski trips (including negotiating with trip providers), we thought this article would help guide schools when they are planning their forthcoming ski trips and in their discussions with trip providers.

The current state of play

As many schools will have observed, ski trip providers last year were flexible in their response to Covid-19-impacted trips. Many trip providers were willing to postpone and rearrange trips at no cost to their customers. However, trip providers appear to be adopting a much more hard-line approach to trips in the 2022 ski season. The providers are maintaining that the full cost of the trip is still due as the slopes and hotels are open. Even though the slopes and hotels are open, the regulations governing entry into those nations are now very different to 2021.

It is now common across European ski destinations that travellers must be vaccinated at least twice. For some countries (i.e. Austria), three doses of the Covid-19 vaccine are required for certain groups. Due to the wait time between vaccine doses imposed by the Government and due to parental choices, it is proving exceptionally difficult for schools to ensure that their travellers meet the entry requirements of the destination country. Consequently, large numbers of students are unable to attend the trip and many parents are seeking refunds.

In response, many schools are withholding the final instalments of their trips, whilst the trip providers maintain that they are in breach of contract. Some providers are even instructing lawyers to threaten schools with the prospect of legal proceedings if they fail to pay the full price of the trip. Some are going one step further by terminating the contract and then seeking full payment of the balance, leaving little opportunity for negotiation. We have observed little inclination on the part of trip providers to postpone trips until the following season without additional costs being charged.

Furthermore, based on the Covid-19 guarantees that we have reviewed, they generally do not cover a situation in which a traveller is prevented from entering the destination country due to their inability to meet the travel stipulations in that country. This applies even if the regulation change has occurred shortly prior to departure.

How should you respond to a provider's hard-line position?

Generally, under a typical contract with a ski trip provider, there will be three options to consider when faced with a trip that is seemingly unlikely to go ahead:

1. Continue paying for the trip whilst negotiating a postponement;

2. Issue the cancellation notice immediately and pay a (likely) reduced cancellation fee compared to '3'); or
3. Issue the cancellation notice shortly before departure date after hitting a negotiating impasse.

The relative merits of each of the three options above is fact dependent and there is no one correct way to respond. We can assess the circumstances of your impacted trip and review the contractual terms that you are bound by, in order to identify the most appropriate outcome for the school.

We would strongly recommend obtaining legal advice prior to making any final decisions on continuing with or terminating the trip. If you are considering withholding payment from the trip provider, we would strongly recommend that you seek legal advice before doing so. It is likely that any withholding of payment will motivate a trip provider to take more drastic steps to obtain the sums that it is seeking, in the form of termination of the contract and the issuing of legal proceedings.

Future trips - providers

Covid-19 guarantees

With the creation of vaccines, Covid-19 passports and wide-spread testing, it is now highly unlikely that ski resorts across Europe will shut down. The most likely issue pertaining to being able to continue with the ski trip is the various travel regulations that apply across Europe and travellers' abilities to accord with those regulations. It is therefore critical, when negotiating with providers for trips at the back end of the 2022 season and beyond, that their Covid-19 guarantees cover a situation in which you cannot travel due to changes in travel regulations at the destination country. Based on the Covid-19 guarantees we have observed in the market, trip providers will generally provide financial cover if:

1. the destination resort or hotel is shut down due to Covid-19 restrictions;
2. the destination country bans travel from the country of origin; and
3. if a quarantine is imposed by either the destination country or the country of origin on arrival.

It is highly unlikely that you will be covered if one or more of your travelling party do not have the requisite vaccine doses, even if the travel regulations stipulating the required number of vaccine doses changes shortly before travel.

If you are in any doubt as to the extent of the cover provided by your Covid-19 guarantee, please get in contact with our team.

Insurance

Where there is any exposure to risk due to discrepancy between the protection afforded by your Covid-19 guarantee and the regulations imposed by the date of travel, we recommend that the school covers its exposure with suitable insurance. Insurers, however, have been unwilling to cover parties for the losses caused as a result of an individual failing to meet the requisite number of vaccine doses at the destination country. This is regarded by many insurers as a "disinclination to travel". It is critical, therefore, that the risk for failing to meet such stipulations is passed on to the parents of the travellers.

Future trips – providers / students / parents

Prior to signing, the school should strongly contest any provision in the contract that seeks to exclude Covid-19-related issues as being an 'unavoidable' and 'extraordinary' circumstance. Trip providers may attempt to have such wording included to avoid certain circumstances falling within the scope of Package Travel and Linked Travel Arrangement Regulations 2018 ("Regulations"), in order to deny the school a potential recovery. Negotiating the removal of such language will aid the school's chances of obtaining a full refund under the Regulations.

We would advise that, if possible, you negotiate with providers at the outset that if the party cannot travel due to Covid-19-related impacts including short-notice vaccine requirement changes in the destination country, that the trip is postponed to the following year and the Covid-19 guarantee remains in place unaltered.

In respect of the school's internal trip policy, it is unlikely, at this stage, that any student who is not at least double vaccinated will be able to enter a European ski destination in the 2022/2023 ski season. As noted above, the school should be clear that it is: (1) entirely the parents' responsibility to ensure that their children meet the travel entry requirements both to and from the country in question, even if those requirements change; and (2) the parents who bear ultimate responsibility to pay for the trip, even if their child cannot go for whatever reason.

If there are any doubts over the terms of your student ski travel contract, we can advise you on the appropriate wording and we can ensure that the contract works hand in hand with your trip provider contract.

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