

Compliance report – assisting passengers during disruption

CAP 1500



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Enquiries regarding the content of this publication should be addressed to: consumerenforcement@caa.co.uk

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Introduction

1. More than 232 million passengers¹ flew from the UK in 2015. The majority of those passengers had a trouble free journey, but sometimes things can go wrong. Bad weather, strikes and technical faults can lead to cancellations or long delays and in these cases European law² ([Regulation 261/2004](#), referred to in future as “the Regulation”) provides rights to passengers. The Regulation requires airlines to look after their passengers during disruption, providing them with information about their rights and providing care and assistance during long delays.
2. Since 2014 we have been developing a performance based approach to compliance. Our approach is based on the view that all airlines should have systems and processes in place to make sure they comply with their legal obligations. We have focused our attention on the Top 30 airlines flying from the UK, based on the number of passengers they carry (the airlines covered are listed in Appendix 1). We then choose specific themes from the Regulation and review compliance across those airlines. This allows us to get a better picture of performance and to target action at the poorer performers.
3. Our approach is based on providing airlines with guidance on the Regulation and setting minimum standards for compliance. The European Commission published Interpretative Guidelines³ in June 2016 which consolidate the court judgments from the Court of Justice of the European Union and provide guidance for airlines and enforcement bodies on how those judgments apply. In our view these guidelines set the minimum standard for compliance.

¹ CAA Airport Statistics 2015.

² Regulation 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

³ [http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0615\(01\)](http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016XC0615(01))

4. We have published three previous reports⁴ which looked at how airlines ensure they provide information to passengers about their rights and payment of compensation when disruption is due to a technical fault on an aircraft.
5. Our current report focuses on four themes:
 - Care and assistance during disruption
 - Compensation for missed connections
 - Denied boarding
 - Downgrading
6. We wrote to airlines in August 2016 asking them to write their own contribution to this report and their responses are included in a separate report ([CAP 1500a](#)). We have also visited most of the airlines to assure ourselves that the oversight processes have been put in place and to see how they work in practice. As a result of this, we agreed with many of the airlines that further improvements would be made to the way they oversee compliance. We will be carrying out some further assurance work later in the year.
7. Each airlines' performance within each of the four themes is reviewed below and we have assessed the compliance of their approach to each theme separately.
8. The first theme considered is the provision of care and assistance. The majority of airlines met the compliance standard and some went beyond it. We are pleased that easyJet, Ryanair, SAS and Singapore Airlines all have processes in place that go beyond our benchmark for oversight of compliance in the provision of care and assistance. We have rated these airlines as Very Good.
9. Vueling and SWISS fell below the compliance standard. Vueling does not pro-actively hand out leaflets to passengers and does not have processes

⁴ www.caa.co.uk/cap1227, www.caa.co.uk/cap1275 and www.caa.co.uk/cap1305.

in place to oversee compliance. We have therefore commenced enforcement action against Vueling.

10. We did not consider the processes that SWISS has in place were effective in demonstrating routine compliance. We will therefore be carrying out further work with them to assess whether their processes work in practice. This will include using our enforcement powers to survey passengers on recently disrupted flights to check if they received their rights.
11. We also identified five airlines who are failing to comply with the requirement to compensate passengers who are affected by a delay that causes them to miss a connecting flight. We have therefore commenced enforcement action against these airlines. These airlines are all non-EU airlines:
 - American Airlines
 - Emirates
 - Etihad
 - Turkish Airlines
 - Singapore Airlines
12. We are pleased to say that the other five non-EU airlines included in our report are paying compensation:
 - Air Canada
 - Cathay Pacific
 - Delta
 - Qatar Airways
 - United Airlines
13. All the UK and EU airlines that offered connecting flights were compliant.
14. In addition, we required a number of airlines to amend their policies in respect of downgrading to apply the calculation set down in Article 10 of the Regulation. We also worked with airlines to ensure that those who offer the choice of a voucher for free travel in cases of downgrading or denied boarding make it clear to consumers that they can choose to have

cash. It was not necessary to take any enforcement action to resolve these issues.

Chapter 1

Care and assistance

What should airlines provide?

- 1.1 When flights are disrupted airlines are required to provide a range of assistance, depending on the length of the delay. This includes:
- refreshments/meals depending upon the expected length of the delay and what is reasonable for the time of day;
 - hotel accommodation for overnight delays;
 - transfers to and from hotels (or if passengers choose to go home);
 - two free telephone calls.
- 1.2 In most cases airlines will organise the care and assistance themselves. They will often provide vouchers to spend at cafes or restaurants in the airport and will book hotels and coaches. However, there are some rare occasions, for example during mass disruption where, in order to avoid overcrowding at the airport, airlines may ask passengers to make their own arrangements and claim a refund of their expenses.
- 1.3 Airlines must ensure that passengers with reduced mobility, or unaccompanied minors are provided with assistance as a priority.

Airline compliance

- 1.4 We asked airlines to tell us how they provide assistance to their passengers. We also wanted to know what processes and procedures they had in place to oversee compliance and to make sure that things were working in practice.
- 1.5 We asked airlines the following questions:
- 1) **How, when and where they provided assistance to passengers.**

- 2) **How they paid particular attention to the needs of passengers with reduced mobility and unaccompanied children.**
- 3) **Details of their processes for assessing how effective they are in practice in providing passengers with care and assistance at the time they are disrupted.**

Airline rankings

1.6 We have benchmarked airlines against what we consider to be a Good level of compliance.

Good

1.7 This is based on the following criteria:

- Care and assistance is pro-actively provided to passengers affected by disruption in the vast majority of cases;
- Expenses are promptly refunded in cases where airlines were unable to provide the assistance;
- Particular attention is paid to the needs of persons with reduced mobility and unaccompanied children;
- There are written procedures for airline or ground handling staff, along with training;
- The airline has good processes in place to oversee compliance.

Very good

1.8 In addition to the requirements set out for 'Good', the airline will have in place processes which provide an even greater level of assurance.

Below the compliance standard

1.9 Falling below the compliance standard was due to there being limited processes in place to oversee compliance.

Summary of compliance

Good

1.10 Airlines that met the compliance standard of Good:

Aer Lingus	Emirates	Qatar Airways
Air Canada	Etihad	Stobart Air
Air France / KLM	Eurowings	Thomas Cook
Alitalia	Flybe	Thomson Airways
American Airlines	Jet2.com	Turkish Airlines
British Airways	Lufthansa	United
Cathay Pacific	Monarch	Virgin Atlantic
Cityjet	Norwegian Air Shuttle	Wizz Air
Delta		

Very good

1.11 The following airlines went above the compliance standard and fell into the Very Good category:

Airline	Reason
easyJet	easyJet surveys disrupted passengers about whether they received their rights
Ryanair	Ryanair surveys disrupted passengers about whether they received their rights
SAS	SAS records the assistance provided against passenger names, along with a robust review and audit process
Singapore Airlines	Singapore Airlines surveys disrupted passengers about whether they received their rights

Below the compliance standard

1.12 The following airlines fell below the compliance standard:

Airline	Reason
SWISS	The information provided to the CAA by SWISS is limited and their oversight process does not appear sufficient to allow it to effectively oversee compliance
Vueling	Vueling does not pro-actively provide leaflets to passengers and does not have an oversight process in place

Chapter 2

Missed connections

What should airlines provide?

- 2.1 Some airlines sell connecting flights, this allows passengers to purchase a single ticket that covers them for the whole journey, even if they have to change aircraft to continue their journey. Connecting flights can be with the same airline, or involve different airlines.
- 2.2 Where a connecting flight leaves the UK and there is a delay on the first flight, this can lead to a missed connection at the interim point. If the passenger is delayed by more than 3 hours at their final destination they are entitled to compensation (unless the reason for the delay was an extraordinary circumstance).

Airline compliance

- 2.3 European case law⁵ has confirmed that connecting flights form a single journey and a delay at the final point is subject to compensation. The European Commission guidelines have confirmed that this applies to EU airlines and also to non-EU airline when the first flight departs from the EU and the connection is missed at an airport outside the EU as well as where the connection is missed in the EU itself.
- 2.4 The UK and EU airlines who offer connecting flights have all confirmed that they will pay compensation in these circumstances. For non-EU airlines the position is mixed: five of the airlines covered by our report have confirmed they do pay compensation but five have confirmed that they refuse to pay financial compensation where the connection is missed at an airport outside of the EU.

⁵ Case C11/11 Air France SA v Heinz-Gerke Folkerts and Luz-Tereza Folkerts.

Non-EU airlines paying compensation

Air Canada

Cathay Pacific

Delta

Qatar Airways

United

Non-EU airlines refusing to pay compensation

American Airlines

Emirates

Etihad

Singapore Airlines

Turkish Airlines

Chapter 3

Denied boarding

What should airlines provide?

- 3.1 Where airlines have insufficient seats to carry all passengers on the aircraft they have to deny boarding to some passengers. The Regulation requires that:
- Airlines should first call for volunteers to give up their seats for agreed benefits;
 - If there are insufficient volunteers the airline will have to involuntarily deny boarding;
 - Airlines must compensate passengers who have been involuntarily denied boarding⁶ and provide assistance to them while awaiting a new flight;
 - Priority for seats should be given to persons with reduced mobility and unaccompanied minors.

Airline compliance

- 3.2 On average less than 0.02% of passengers flying in and out of the UK were affected by denied boarding during 2015.
- 3.3 All the airlines confirmed that they call for volunteers first and tried to do so as early as possible, sometimes being able to reach passengers before they had set off for the airport. The main reasons airlines denied boarding were due to overbooking or having to bring in a smaller aircraft than planned to operate a flight.

⁶ The compensation amounts are €250 for short haul, €400 for medium haul and €600 for long haul.

- 3.4 Airlines use a range of ways to provide compensation, some provide cash at the airport, some provide a cash card and some will transfer funds following a claim. A number of airlines offer passengers the choice between a voucher for future travel or cash compensation. In relation to this last point, we have satisfied ourselves that the relevant airlines make it clear to consumers that this is a genuine choice and that consumers are aware of what they are entitled to.
- 3.5 We did not identify any compliance issues regarding denied boarding.

Chapter 4

Downgrading

What should airlines provide?

- 4.1 Downgrading is when a passenger has booked to travel in Premium Economy, Business or First Class and the airline has to move them into a lower class of travel. This typically happens when an aircraft is overbooked or a smaller aircraft is used which does not have sufficient seats in the higher class.
- 4.2 Airlines are required to reimburse a proportion of the ticket price⁷ of the flight leg on which the passenger was downgraded. They do not have to refund taxes, unless a higher amount was charged based on the class.

Airline business models

Airlines who offer different classes of travel

- 4.3 The following airlines offer different classes of travel and have confirmed they re-imburse the correct percentage of the flight price when downgrading:

Air Canada	Delta	Qatar Airways
Air France / KLM	Emirates	SAS
Alitalia	Etihad	Singapore Airlines
American Airlines	Eurowings	SWISS
British Airways	Lufthansa	Turkish Airlines
Cathay Pacific	Norwegian Air Shuttle	United
Cityjet		Virgin Atlantic

⁷ 30% for short haul, 50% for mid-haul and 75% for long haul

Airlines with only one class of travel

4.4 These airlines do not offer different classes of travel. Some, however, do offer consumers the option to purchase different types of tickets that provide flexibility, or include extras such as one piece of hold luggage or the ability to select a seat. We do not consider these constitute a different class of travel, but if any services are not provided consumers should be able to claim back the cost of those individual services.

Aer Lingus	Jet2.com	Stobart Air
easyJet	Monarch	Vueling
Flybe	Ryanair	Wizz Air

Charter airlines that charge a set fee to upgrade

4.5 Thomas Cook and Thomson Airways advertise the ability to upgrade to Premium Economy and display the price for that upgrade. We do not consider that such an upgrade constitutes a different class of travel, but if the airline is unable to provide the upgrade consumers should be able to claim a refund of the fee that was paid for the upgrade.

Conclusion

4.6 As in the case of denied boarding, some airlines offer passengers the choice between a voucher for future travel or cash compensation. We have taken the same steps to satisfy ourselves that these airlines make it clear that this is a genuine choice. We did not identify any issues that required enforcement action.

Chapter 5

CAA action and next steps

CAA action

Care and assistance

5.1 Vueling and SWISS fell below the compliance standard. We have commenced enforcement action against Vueling. We will also be using our enforcement powers to survey SWISS passengers on recently disrupted flights to consider whether their compliance oversight processes work in practice.

Missed connections

5.2 We have been in discussion with the five airlines who are not paying compensation and they have refused to change their position. We note that the Court of Appeal may hear an appeal in the case of *Gahan v Emirates*, however, there is always a risk that the case may be withdrawn and it is not clear what issues the case will focus on.

5.3 In our view the law is clear, the European courts have considered the issue already⁸ and the European Commission has provided guidance to ensure a consistent application of the Regulation across the EU. We therefore consider it is important to tackle this issue and ensure that airlines compete fairly against each other.

5.4 The airlines concerned have told us that in their view the law is unclear, yet most are continuing to refuse passenger claims. Following our discussions Singapore Airlines has confirmed that it will not refuse passenger claims and will instead place claims on hold. Turkish Airlines participates in Alternative Dispute Resolution⁹ and passengers who

⁸ Case C11/11 Air France SA v Heinz-Gerke Folkerts and Luz-Tereza Folkerts.

⁹ www.caa.co.uk/Passengers/Resolving-travel-problems/How-the-CAA-can-help/Alternative-dispute-resolution

choose to take their case through this route will receive their compensation. We welcome the steps taken by these two airlines. However, we do not believe that they go far enough and these airlines are still failing to comply.

- 5.5 The largest number of complaints we receive about missed connections relates to Emirates. Emirates refuses to cooperate with the CAA's Passenger Advice and Complaints Team in its investigations of these complaints. This is of great concern to the CAA. Further, Emirates refuses to pay the fee¹⁰ that the CAA charges each airline for handling a passenger complaint. Again this is unacceptable and we will be initiating debt recovery proceedings.
- 5.6 The CAA has commenced enforcement action¹¹ against American Airlines, Emirates, Etihad, Turkish Airlines and Singapore Airlines. We will also consider imposing enhanced consumer measures¹² as part of our action which could include measures to ensure future compliance, improve consumer's ability to make an informed choice or provide financial redress when there has been financial loss.

Next steps

- 5.7 Later in the year we will commence a review of airline policies and procedures in relation to cancellations and their obligations to offer passengers the choice between a refund or re-routing.

¹⁰ The CAA charges airlines a fee of £150 for each complaint received.

¹¹ Our enforcement powers come from Part 8 of the Enterprise Act 2002.

¹² As detailed in Schedule 7 of the Consumer Rights Act 2015.

Appendix A

Top 30 airlines – Year to December 2015

Passengers carried by top 30 airlines: 209,371,700

Proportion of total passengers: 90%

Airline name	Passengers carried	Delays of hour or more
British Airways¹³	44,288,120	188,627
easyJet	37,798,616	218,501
Ryanair	35,142,259	155,894
Thomson Airways	10,504,491	66,558
Flybe	7,760,994	22,368
Thomas Cook	6,359,801	53,054
Virgin Atlantic	5,968,551	41,644
Jet2.com	5,936,382	28,992
Monarch	5,724,586	26,237
KLM Air France¹⁴	5,485,861	11,379
Wizz Air	4,843,657	32,050
Emirates	4,624,045	10,317
Norwegian Air Shuttle¹⁵	4,099,998	36,843
Aer Lingus	3,603,974	12,819
American Airlines¹⁶	3,056,025	50,025
Lufthansa	2,996,569	3,639

¹³ Data includes BA Cityflyer.

¹⁴ Data includes KLM Cityflyer.

¹⁵ Data includes Norwegian Air International.

¹⁶ Data includes US Airways.

Airline name	Passengers carried	Delays of hour or more
United Airlines	2,466,816	24,989
SAS	2,161,202	3,761
Eurowings	1,875,738	5,789
SWISS	1,704,739	1,891
Air Canada	1,664,482	16,765
Turkish Airlines	1,479,670	6,178
Qatar Airways	1,449,559	2,403
Delta	1,271,519	9,762
Etihad	1,260,303	6,153
Cityjet	1,130,919	3,704
Cathay Pacific	1,064,395	8,420
Stobart Air	1,025,529	6,318
Vueling	983,470	13,639
Singapore Airlines	943,522	2,453
Alitalia	696,404	1,988

Source: CAA Airport Statistics

Appendix B

EU261/2004, relevant case law and CAA view on compliance

This Appendix sets out the law in relation to care, denied boarding, downgrading and missed connections. It includes extracts from Regulation [EU261/2004](#) and relevant case law. It also includes extracts from the interpretative guidelines¹⁷ published by the European Commission in June 2016. The Commission has explained that the guidelines do not cover all the provisions in the Regulation and they are not exhaustive. Their aim is to provide clarity and to help ensure greater consistency across the EU. The CAA supports the guidelines and considers them to set the minimum compliance standard. In some cases we have also set out some additional detail to supplement the guidelines and this is clearly highlighted in each section below.

Right to care

EU261/2004

Recital 10

“Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.”

Recital 13

“Passengers whose flights are cancelled should be able either to obtain reimbursement of their tickets or to obtain re-routing under satisfactory conditions, and should be adequately cared for while awaiting a later flight.”

¹⁷ http://ec.europa.eu/transport/themes/passengers/news/2016-06-10-better-enforcement-pax-rights_en

Recital 17

“Passengers whose flights are delayed for a specified time should be adequately cared for and should be able to cancel their flights with reimbursement of their tickets or to continue them under satisfactory conditions.”

Recital 18

“Care for passengers awaiting an alternative or a delayed flight may be limited or declined if the provision of the care would itself cause further delay.”

Article 9 – Right to care

- “1. Where reference is made to this Article, passengers shall be offered free of charge:
 - a. meals and refreshments in a reasonable relation to the waiting time;
 - b. hotel accommodation in cases
 - where a stay of one or more nights becomes necessary, or
 - where a stay additional to that intended by the passenger becomes necessary;
 - c. transport between the airport and place of accommodation (hotel or other).
2. In addition, passengers shall be offered free of charge two telephone calls, telex or fax messages, or e-mails.
3. In applying this Article, the operating air carrier shall pay particular attention to the needs of persons with reduced mobility and any persons accompanying them, as well as to the needs of unaccompanied children.”

European case law

The case of *McDonagh v Ryanair Ltd* confirms that if an airline fails to provide care and assistance, a passenger can claim a refund of the expenses they incurred in purchasing their own meals, hotel accommodation etc.

C 12/11 – Denise McDonagh v Ryanair Ltd

“66 Consequently, the answer to the fourth and fifth questions is that Articles 5(1)(b) and 9 of Regulation No 261/2004 must be interpreted as meaning

that, in the event of cancellation of a flight due to ‘extraordinary circumstances’ of a duration such as that in the main proceedings, the obligation to provide care to air passengers laid down in those provisions must be complied with, and the validity of those provisions is not affected.

However, an air passenger may only obtain, by way of compensation for the failure of the air carrier to comply with its obligation referred to in Articles 5(1)(b) and 9 of Regulation No 261/2004 to provide care, reimbursement of the amounts which, in the light of the specific circumstances of each case, proved necessary, appropriate and reasonable to make up for the shortcomings of the air carrier in the provision of care to that passenger, a matter which is for the national court to assess.”

European Commission interpretative guidelines

“4c. Right to care in the event of denied boarding, cancellation or delay at departure

Concept of right to care

When the passenger, following an incident of denied boarding, cancellation or delay at departure agrees with the air carrier to re-routing at a later date at his or her own convenience (Article 8(1)(c)), the right to care ends. In fact, the right to care subsists only as long as passengers have to wait for re-routing, under comparable transport conditions, to their final destination at the earliest opportunity (Article 8(1)(b)) or a return flight (Article 8(1)(a) second indent).

Provision of meals, refreshments and accommodation

The intention of the Regulation is that the needs of passengers waiting for their return flight or re-routing are to be adequately taken care of. The extent of adequate care will have to be assessed on a case-by-case basis, having due regard to the needs of passengers in the relevant circumstances and the principle of proportionality (i.e.: according to the waiting time). The price paid for the ticket or temporality of the inconvenience suffered should not interfere with the right of care.

With regard to Article 9(1)(a) (meals and refreshments), the Commission considers the expression 'in reasonable relation to the waiting time' to mean that operating air carriers should provide passengers with appropriate care corresponding to the expected length of the delay and the time of day (or night) at which it occurs, including at the transfer airport in the case of connecting flights, in order to reduce the inconvenience suffered by the passengers as much as possible, while bearing in mind the principle of proportionality. Particular attention has to be given to the needs of people with disabilities or reduced mobility and unaccompanied children.

Furthermore, passengers should be offered care free of charge in a clear and accessible way, including via electronic means of communication when passengers have accepted to give their personal data. Otherwise, passengers should make themselves known to the operating air carrier in the event of travel disruption. This means that passengers should not be left to make arrangements themselves, e.g. finding and paying for accommodation or food. Instead, operating air carriers are obliged to actively offer care. Operating air carriers should also ensure, where available, that accommodation is accessible for people with disabilities and their service dogs.

If care is nevertheless not offered even though it should have been, passengers who have had to pay for meals and refreshments, hotel accommodation, transport between the airport and place of accommodation and/or telecommunication services can obtain reimbursement of the expenses incurred from the air carrier, provided they were necessary, reasonable and appropriate¹⁸.

If a passenger rejects the air carrier's reasonable care which has to be offered under Article 9 and makes his or her own arrangements, the air carrier is not obliged to reimburse the expenses incurred by the passenger, unless otherwise established under national law or agreed beforehand by the air carrier and in any case, up to the amount corresponding to the afore-

¹⁸ Case C-12/11, McDonagh, ECLI:EU:C:2013:43, paragraph 66.

mentioned air carrier's 'reasonable offer' in order to provide equal treatment between passengers. Passengers should also retain all receipts for the expenses incurred. However, passengers do not have the right to be compensated for damage suffered because of a lack of care if they have not incurred expenses.

In any event, passengers who feel that they are entitled to have more of their expenses reimbursed or to obtain compensation for damage suffered as a result of a delay, including expenses, retain the right to base their claims on the provisions of the Montreal Convention, as well as Article 3 of Regulation (EC) No 2027/97 and to pursue the air carrier through a national court procedure or address themselves to the competent national enforcement body. In some Member States passengers may have to address themselves to alternative dispute resolution for consumer disputes entities (see paragraph 7.3 below).

It should be borne in mind that according to Recital 18 of the Regulation, care may be limited or declined if its provision would itself cause further delay to passengers awaiting an alternative or a delayed flight. In case a flight is delayed late in the evening but can be expected to depart within a few hours and for which the delay could be much longer if passengers had to be dispatched to hotels and brought back to the airport in the middle of the night this carrier should be allowed to decline to provide this care. Similarly, if a carrier is about to give vouchers for food and drinks but is informed that the flight is ready for boarding, it should be allowed to decline providing care. Apart from these cases, the Commission is of the opinion that this limitation is to be applied only in very exceptional cases, as every effort should be made to reduce the inconvenience suffered by passengers.

The right of care under the Regulation is without prejudice to the obligations of organisers of packages under package travel rules.

iii. *Care in extraordinary circumstances or exceptional events*

According to the Regulation, the air carrier is obliged to fulfil the obligation of care even when the cancellation of a flight is caused by extraordinary

circumstances, that is to say circumstances which could not have been avoided even if all reasonable measures had been taken. The Regulation contains nothing that would allow the conclusion to be drawn that it recognises a separate category of ‘particularly extraordinary’ events, beyond the ‘extraordinary circumstances’ referred to in Article 5(3) of the Regulation, which would lead to the air carrier being exempted from all its obligations, including those under Article 9 of the Regulation, even during a long period, particularly since passengers are especially vulnerable in such circumstances and events¹⁹.

In exceptional events, the intention of the Regulation is to ensure that adequate care is provided in particular to passengers waiting for re-routing under Article 8(1)(b). However sanctions should not be imposed on airlines where they can prove that they have undertaken their best endeavours to comply with their obligations under the Regulation taking into consideration the particular circumstances linked to the events and the principle of proportionality. However, NEBs should apply sanctions if they consider that an air carrier has taken advantage of such events to evade its obligations under the Regulation.”

Additional CAA guidance

The amount of vouchers provided for meals and refreshments should be sufficient to cover the typical cost of purchasing a snack or meal (depending upon the length of delay) at the relevant airport. Airlines should ensure that they have a way of monitoring these costs and keeping the voucher amounts up to date.

The legislation and the guidelines set out clearly the obligation on airlines to pro-actively contact passengers and offer the appropriate care and assistance. There may be some very rare occasions where it would be better for passengers to make their own arrangements and claim back their expenses from their airline. This may be the case during particularly severe disruption, for example where all the flights from a particular airport are severely disrupted over a sustained period, when passengers could face long waits to obtain assistance from their airline. If airlines do

¹⁹ Case C-12/11, McDonagh, ECLI:EU:C:2013:43, paragraph 30.

provide for passengers to make their own arrangements we expect them to provide clear information to consumers about the level of expenditure they consider reasonable and how to claim the money back. We expect this to be done promptly, so as to minimise the inconvenience to passengers. We also expect airlines to make the process for passengers claiming back their expenses simple and quick. In relation to PRMs, those accompanying them and unaccompanied children, these groups of passengers should be looked after as a priority by airlines and airlines should ensure that they continue to pro-actively provide assistance for these passengers. In particular, when arranging overnight accommodation for PRMs, airlines should ensure that the accommodation is accessible.

In some cases of cancellation passengers may not be at the airport as airlines may be able to notify them in advance of travelling to the airport. This can have benefits for consumers as it stops them having long waits at the airport and may allow them to stay at home and set off for the trip later. For passengers away from home, they may also be able to delay their travel to the airport. In these cases passengers may face additional costs, such as paying for accommodation, meals and refreshments or transport to and from the airport. In the case of a cancellation, the Regulation requires the airline to offer the passenger the choice between a refund or a reroute. It is the CAA's view that, at this point, the airline should also provide information to the passenger on what they are entitled to in terms of accommodation, meals and refreshments, and transport, how this will be organised and, on the very rare occasions where passengers will need to organise this themselves, guidance on what the airline considers is reasonable expenditure and how the passenger can claim back their expenses.

Denied boarding

EU261/2004

Recital 9

“The number of passengers denied boarding against their will should be reduced by requiring air carriers to call for volunteers to surrender their reservations, in

exchange for benefits, instead of denying passengers boarding, and by fully compensating those finally denied boarding.”

Recital 10

“Passengers denied boarding against their will should be able either to cancel their flights, with reimbursement of their tickets, or to continue them under satisfactory conditions, and should be adequately cared for while awaiting a later flight.”

Recital 11

“Volunteers should also be able to cancel their flights, with reimbursement of their tickets, or continue them under satisfactory conditions, since they face difficulties of travel similar to those experienced by passengers denied boarding against their will.”

Article 2

- “(j) “denied boarding” means a refusal to carry passengers on a flight, although they have presented themselves for boarding under the conditions laid down in Article 3(2), except where there are reasonable grounds to deny them boarding, such as reasons of health, safety or security, or inadequate travel documentation;
- (k) “volunteer” means a person who has presented himself for boarding under the conditions laid down in Article 3(2) and responds positively to the air carrier's call for passengers prepared to surrender their reservation in exchange for benefits.”

Article 4 – Denied boarding

- “1. When an operating air carrier reasonably expects to deny boarding on a flight, it shall first call for volunteers to surrender their reservations in exchange for benefits under conditions to be agreed between the passenger concerned and the operating air carrier. Volunteers shall be assisted in accordance with Article 8, such assistance being additional to the benefits mentioned in this paragraph.
2. If an insufficient number of volunteers comes forward to allow the remaining passengers with reservations to board the flight, the operating air carrier may then deny boarding to passengers against their will.

3. If boarding is denied to passengers against their will, the operating air carrier shall immediately compensate them in accordance with Article 7 and assist them in accordance with Articles 8 and 9.”

European case law

The case of *Finnair v Lassooy* confirmed that denied boarding is not restricted to cases of overbooking. It also covers other grounds such as operational reasons.

C-22/11 – Finnair v Lassooy

- “25. Consequently, an air carrier’s refusal to allow the boarding of a passenger who has presented himself for boarding in accordance with the conditions laid down in Article 3(2) of Regulation No 261/2004, on the basis that the flights arranged by that carrier have been rescheduled, must be characterised as ‘denied boarding’ within the meaning of Article 2(j) of that regulation.
26. In the light of the foregoing, the answer to the first question is that the concept of ‘denied boarding’, within the meaning of Articles 2(j) and 4 of Regulation No 261/2004, must be interpreted as relating not only to cases where boarding is denied because of overbooking but also to those where boarding is denied on other grounds, such as operational reasons.”

C 321/11 – Cachafeiro v Iberia

- “36. In the light of the foregoing, the answer to the question referred is that Article 2(j) of Regulation No 261/2004, read in conjunction with Article 3(2) of that regulation, must be interpreted as meaning that the concept of ‘denied boarding’ includes a situation where, in the context of a single contract of carriage involving a number of reservations on immediately connecting flights and a single check-in, an air carrier denies boarding to some passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight.”

European Commission interpretative guidelines – June 2016

The following paragraphs outline guidance on the concept of denied boarding and the right to compensation for denied boarding:

“3.1. Denied boarding

3.1.1. Concept of ‘denied boarding’

In accordance with Article 2(j) of the Regulation, ‘denied boarding’ does not cover a situation where there are reasonable grounds for refusing to carry passengers on a flight even though they presented themselves on time for the flight, such as for reasons of health, safety or security, or inadequate travel documentation. However, the concept of ‘denied boarding’ relates not only to cases of overbooking but also to those where boarding is denied on other grounds, such as operational reasons²⁰.

With regard to travel by disabled persons or persons with reduced mobility reference is made to Article 4 of Regulation (EC) No 1107/2006 of the European Parliament and of the Council²¹ and the relevant guidelines²² which precisely address such cases in "Answer to question 4".

If the passenger is refused carriage on the return flight due to the fact that the operating air carrier has cancelled the outbound flight and rerouted the passenger on another flight, this would constitute denied boarding and give rise to additional compensation from the operating air carrier. When a passenger who holds a reservation including an outbound and a return flight is not allowed to board on the return flight because he or she did not take the outbound flight (so-called ‘no-show’), this does not constitute denied boarding within the meaning of Article 2(j). The same is true when a passenger who holds a reservation including consecutive flights is not

²⁰ Case C-22/11, Finnair, ECLI:EU:C:2012:604, paragraph 26.

²¹ Regulation (EC) No 1107/2006 of 5 July 2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air, OJ L 204, 26.7.2006, p.1.

²² Commission Staff Working Document, Interpretative Guidelines on the application of Regulation (EC) No 1107/2006 of 5 July 2006 of the European Parliament and of the Council concerning the rights of disabled persons and persons with reduced mobility when travelling by air, Brussels 11.6.2012, SWD(2012) 171 final.

allowed to board a flight because he did not take the previous flight(s). These two situations are usually based on the terms and conditions linked to the ticket purchased. Such a practice might however be prohibited by national law. When the original flight of a passenger who holds a confirmed reservation is delayed and the passenger is re-routed on another flight, this does not constitute denied boarding within the meaning of Article 2(j). When a passenger travelling with a pet is not in a position to proceed because he or she does not hold the relevant pet documentation, that cannot constitute denied boarding either. However, where passengers are denied boarding due to a mistake made by ground staff when checking their travel documents (including visas), that constitutes denial of boarding within the meaning of Article 2(j). That is however not the case when in accordance with Article 2(j), the air carrier and its crew refuse a passenger to board due to security concerns based on reasonable grounds. Air carriers should make full use of IATA's Timatic database and consult the public authorities (embassies and Ministries of Foreign Affairs) of the countries concerned to verify travel documents and (entry) visa requirements for countries of destination to prevent that passengers are incorrectly denied boarding. Member States should make sure that they provide comprehensive and up-to-date information to IATA/Timatic regarding travel documentation, notably in relation to visa requirements or exemption from this requirement.

3.1.2. Rights associated with denied boarding

Denial of boarding against the passenger's will gives a right to 'compensation' as defined in Article 7 of the Regulation, a right to choose between reimbursement, re-routing or rebooking at a later stage as provided in Article 8, and a right to 'care' according to Article 9."

"4.d.A. Compensation in the event of denied boarding

i. Compensation, denied boarding and exceptional circumstances

Articles 2(j) and 4(3) of the Regulation must be interpreted as meaning that compensation is always due in the event of denied boarding and air carriers cannot validly justify an instance of denied boarding and be exempted from

paying compensation to passengers by invoking extraordinary circumstances²³.

Compensation, denied boarding and connecting flights

Passengers on connected flights must be compensated where, in the context of a single contract of carriage with an itinerary involving directly connecting flights and a single check-in, an air carrier denies boarding to some passengers on the ground that the first flight included in their reservation has been subject to a delay attributable to that carrier and the latter mistakenly expected those passengers not to arrive in time to board the second flight²⁴. In contrast, if passengers have two separate tickets for two consecutive flights and delay of the first flight means that they are unable to check in on time for the following flight, in this case air carriers are not obliged to pay compensation. However, if the delay of the first flight is over three hours, the passenger can be entitled for compensation from the carrier operating this first flight.

Amount of compensation

The compensation is calculated in accordance with Article 7(1) of the Regulation. It can be reduced by 50 % if the conditions of Article 7(2) are fulfilled.”

Additional CAA guidance

Airlines must ensure that they pay particular attention to the needs of unaccompanied minors and PRM passengers.

For the carriage of PRMs, there are often associated security and safety restrictions, which could potentially result in denied boarding; for example, in relation to the safe carriage of electric mobility aids or medical equipment. PRMs and other passengers may also be required to seek medical clearance to travel. If an airline does not have

²³ Case C-22/11, Finnair, ECLI:EU:C2012:604, paragraph 40.

²⁴ Case C 321/11, Rodriguez Cachafeiro and Martinez-Reboredo Varela Villamor, ECLI:EU:C:2012:609, paragraph 36.

a justifiable reason, these passengers should also receive compensation, care and assistance if denied boarding.

The Regulation requires that airlines compensate passengers immediately. It is the CAA's view that "immediately" does not necessarily mean at the airport at the time that boarding is denied. However, there should be no need for passengers that have been denied boarding to submit a claim to the airline for their compensation. It is the responsibility of the airline to arrange for automatic payment of the compensation.

Upgrading and downgrading

EU 261/2004

Article 10 – Upgrading and Downgrading

- “1. If an operating air carrier places a passenger in a class higher than that for which the ticket was purchased, it may not request any supplementary payment.
2. If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse
- (a) 30 % of the price of the ticket for all flights of 1500 kilometres or less, or
 - (b) 50 % of the price of the ticket for all intra-Community flights of more than 1500 kilometres, except flights between the European territory of the Member States and the French overseas departments, and for all other flights between 1500 and 3500 kilometres, or
 - (c) 75 % of the price of the ticket for all flights not falling under (a) or (b), including flights between the European territory of the Member States and the French overseas departments.”

European Commission guidelines

“3.4. Upgrading and downgrading

3.4.1. *Definition of upgrading and downgrading*

Upgrading and downgrading are respectively defined in Article 10(1) and (2) of the Regulation.

3.4.2. *Rights associated with upgrading and downgrading*

In the case of upgrading, an air carrier cannot request any supplementary payment. In the case of downgrading, compensation in the form of reimbursement of a percentage of the price of the ticket is provided for under Article 10(2)(a) to (c) of the Regulation.

The definition of downgrading (or upgrading) applies to the class of carriage for which the ticket was purchased and not to any advantages offered through a frequent flyer programme or other commercial programme provided by an air carrier or tour operator.”

“4.d.D. *Reimbursement in the event of downgrading*

xi. *Calculation of the amount*

In accordance with Article 10 of the Regulation, reimbursement is payable only for the flight on which the passenger has been downgraded and not for the whole journey included in a single ticket, which may include two or more connecting flights. The afore-mentioned reimbursement should be paid within seven days.”

European case law

This case was decided shortly after publication of the European Commission guidelines and provides some additional clarification on how reimbursement for downgrading should be calculated.

C-255/15 – Mennens v Emirates

“On those grounds, the Court (Third Chamber) hereby rules:

1. Article 10(2), read in conjunction with Article 2(f), of Regulation (EC) No 261/2004 of the European Parliament and of the Council of 11 February 2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights, and repealing Regulation (EEC) No 295/91 must be interpreted as

meaning that where a passenger is downgraded on a flight, the price to be taken into account in determining the reimbursement for the passenger affected is the price of the flight on which he was downgraded unless that price is not indicated on the ticket entitling him to transport on that flight, in which case it must be based on the part of the price of the ticket corresponding to the quotient resulting from the distance of that flight and the total distance which the passenger is entitled to travel.

2. Article 10(2) of Regulation No 261/2004 must be interpreted as meaning that, the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed to that passenger, where he is downgraded on a flight, is solely the price of the flight itself, to the exclusion of taxes and charges indicated on that ticket, as long as neither the requirement to pay those taxes and charges nor their amount depends on the class for which that ticket has been purchased.”

Additional CAA guidance

Airlines should set out clearly to consumers how they have calculated the amount reimbursed. Refunds should be made automatically to consumers within 7 days of the downgrade. There should be no need for passengers that have been downgraded to submit a claim to the airline for their refund.

Connecting flights

EU 261/2004

Article 2 – Definitions

- “(h) "final destination" means the destination on the ticket presented at the check-in counter or, in the case of directly connecting flights, the destination of the last flight; alternative connecting flights available shall not be taken into account if the original planned arrival time is respected;”

European case law

Joined cases C 402/07 and C-432/07, *Sturgeon v Air France*

“69 In the light of the foregoing, the answer to the second part of the questions referred is that Articles 5, 6 and 7 of Regulation No 261/2004 must be interpreted as meaning that passengers whose flights are delayed may be treated, for the purposes of the application of the right to compensation, as passengers whose flights are cancelled and they may thus rely on the right to compensation laid down in Article 7 of the regulation where they suffer, on account of a flight delay, a loss of time equal to or in excess of three hours, that is, where they reach their final destination three hours or more after the arrival time originally scheduled by the air carrier. Such a delay does not, however, entitle passengers to compensation if the air carrier can prove that the long delay was caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken, namely circumstances beyond the actual control of the air carrier.”

Case C 11/11 *Air France v Folkerts*

“47 In the light of the foregoing, the answer to the first question referred for a preliminary ruling is that Article 7 of Regulation No 261/2004 must be interpreted as meaning that compensation is payable, on the basis of that article, to a passenger on directly connecting flights who has been delayed at departure for a period below the limits specified in Article 6 of that regulation, but has arrived at his final destination at least three hours later than the scheduled arrival time, given that the compensation in question is not conditional upon there having been a delay at departure and, thus, upon the conditions set out in Article 6 having been met.”

European Commission guidelines

“4.C.vii. Compensation for late arrival in the case of connecting flights

The Court²⁵ takes the view that a delay must be assessed for the purposes of the compensation provided for in Article 7 of the Regulation, in relation to

²⁵ Case C-11/11, *Folkerts*, ECLI:EU:C:2013:106, paragraph 47.

the scheduled time of arrival at the passenger's final destination as defined in Article 2(h) of the Regulation, which in the case of directly connecting flights must be understood as the destination of the last flight taken by the passenger.

In accordance with Article 3(1)(a), passengers who missed a connection within the EU, or outside the EU with a flight coming from an airport situated in the territory of a Member State, should be entitled to compensation, if they arrived at final destination with a delay of more than three hours. Whether the carrier operating the connecting flights is an EU carrier or a non-EU carrier is not relevant.

In the case of passengers departing from an airport in a non-EU country to an airport situated in the territory of a Member State as their final destination in accordance with Article 3(1)(b), with directly connecting flights operated successively by non-EU and EU carriers or by EU carriers only, the right to compensation in case of a long delay on arrival at the final destination should be assessed only in relation to the flights operated by EU carriers.

Missed connecting flights due to significant delays at security checks or passengers failing to respect the boarding time of their flight at their airport of transfer do not give entitlement to compensation.”

ix. Amount of compensation

When the delay at arrival is less than four hours for a journey of more than 3500 km involving an airport located outside the EU, the compensation can be reduced by 50 % and therefore amounts to EUR 30044 in application of Article 7(2) of the Regulation²⁶.

x. Calculation of the distance on the basis of the 'journey' to determine the compensation in the event of long delay at final destination

The Folkerts case²⁷ explicitly referred to the concept of a 'journey' composed of several connecting flights. The 'final destination' being defined in Article

²⁶ Joined cases C-402/07 and C437-07, Sturgeon e.a., ECLI:EU:C:2009:716, paragraph 63.

²⁷ Case C-11/11, Folkerts, ECLI:EU:C:2013:106, paragraph 18.

2(h) of the Regulation as the destination on the ticket used for the check-in or, in the case of directly connecting flights, the destination of the last flight. According to Article 7(4) of the Regulation the distance which determines the compensation to be paid in case of long delay at the final destination should be based on the 'great circle' distance between the place of departure and the final destination i.e. the 'journey' and not by adding the 'great circle' distances between the different relevant connecting flights composing the 'journey'.

Extracts from the Annex to the guidelines which provides some examples of journey types for connecting flights and which EU enforcement body would have responsibility

"These examples only consider situations "in the case of directly connecting flights, (.) only the delay beyond the scheduled time of arrival at the final destination".

It is assumed that the long delay at final destination is only due to a missed connection, no other type of incidents is being considered and no extraordinary circumstances apply.

Journey 1: Departure from an EU MS A (Flight 1), transfer in an EU MS B to an EU final destination C (Flight 2).

According to article 16(1), the competent NEB is the one of MS B. The amount of compensation is calculated on the basis of the whole journey.

Journey 2: Departure from an EU MS A (Flight 1), transfer in a third country airport to another third country final destination (Flight 2).

According to article 16(1), the competent NEB is the one of MS A. The amount of compensation is calculated on the basis of the whole journey.

Journey 3: Departure from an non-EU MS (Flight 1 operated by an EU carrier), transfer in an EU MS A to a final destination in EU MS B (Flight 2).

According to article 16(1), the competent NEB is the one of MS A. The amount of compensation is calculated on the basis of the whole journey."

Additional CAA guidance

The CAA does not propose any additional guidance in relation to connecting flights.