



Air Passenger Rights: Consumer Complaints 2005

A Summary & Analysis of Consumer Complaints
reported to the European Consumer Centre Network



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1. Introduction

The European Consumer Centre (ECC) Network consists of centres in 27 European countries¹. The Network is co-financed by the Health and Consumer Protection Directorate General of the European Commission and each of the Member States or countries. The mission of the ECC Network is to create confidence in the Internal Market. This is achieved by providing information to consumers on their rights in the EU and by assisting them with cross-border disputes.

In addition to answering consumers' questions about their rights under EU legislation and handling cross-border disputes, each ECC: carries out information campaigns; publishes information and a website; gives presentations and talks; produces various joint projects, reports and surveys; and provides feedback to the European Commission based on its practical experiences of case-handling.

In February 2005 a new European Regulation (261/04)² came into effect which gives consumers rights when denied boarding or when a flight is delayed or cancelled. In June of 2004 the Montreal Convention replaced the existing Warsaw Convention which introduced new rules on compensation for loss, damage or delay to baggage or persons. At the same time ECCs reported an increase in requests for information on the new rights and an increase in complaints and disputes. This increase continued throughout 2005 and air passenger rights continue to be one of the biggest areas of complaints handled by the ECC Net in 2006.

Hand in hand with the increase in air travel complaints, ECCs began to report some difficulties in resolving complaints and differences in interpretation of the relevant law. These reasons lead the ECC network to publish a Report which would analyse the nature of air travel complaints as received by ECC Net in 2005.

This Report, which has been co-ordinated and written by the UK and Irish ECCs, analyses all of the air passenger rights cases received by the Network in 2005 and presents a summary of the results. The total number of air travel cases received in 2005 was 2,716 or 15% of the total cases received. In the first six months of 2006 this figure had already risen to 17% of the total cases received and reports indicate that this continues to rise³.

Trends are similar across Europe; with the highest number of complaints relating to luggage, followed closely by complaints relating to delay and cancellation. Similar trends also emerge in terms of handling the complaints, in relation to the interpretation of the legislation on the part of airlines, the involvement of the National Enforcement Bodies (NEB)⁴ and the obvious lack of competent Alternative Dispute Resolution (ADR) bodies.

With the advent of cheap and easy air travel, increasingly more European consumers are travelling by air. This Report highlights the problems that exist when complaints arise and makes recommendations as to what should happen in order to improve the lot of over 450 million potential European air travellers, whose rights are not always upheld and whose complaints are not always answered.

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¹25 Member States plus Norway and Iceland.

²European Regulation on Denied Boarding, Cancellation or long Delay, Reg (EC) No 261/2004.

³For 2005 figures none are available for Slovakia, Slovenia, Malta and Hungary as those ECCs were not yet in operation. For early 2006 no figures exist for Slovakia, Slovenia and Malta, for the same reason.

⁴Under Regulation 261 / 2004 dealing with air passenger rights, each Member State had to nominate a National Enforcement Body charged with enforcing the Regulation.

2. Scope

The purpose of this Report is to analyse the air travel complaints received by the ECC Network in 2005 and to use that as a basis for comment on the problem areas and to suggest recommendations.

All of the statistics, statements and conclusions made in the Report are based upon the information that has been provided by each of the national ECC offices. The opinions contained in the Report are not those of the European Commission or of national funding bodies.

A copy of the questionnaire sent to all ECCs can be found at Appendix a.

The cases received by the ECC Net are broken down into 'requests for information' and 'complaints and disputes'.

A 'request for information' means any query by a consumer regarding a consumer issue where expert information on EU consumer legislation and/or advice is given. 'Complaints and disputes' mean active complaints where intervention is necessary on the part of an ECC and where unresolved the dispute is transferred to an Alternative Dispute Resolution (ADR) body where available. 'Cases' mean all of the above.

3. General Results

3.1 Types of cases

In 2005 ECC Net recorded 1195 information requests. The type of information requested in this category can be broken down as follows:

TYPE OF INFO REQUEST ⁵	TOTAL	%
OTHER	333	28
DELAY	273	23
LUGGAGE RELATED	273	22
CANCELLATION	210	18
NOT KNOWN ⁶	61	5
DENIED BOARDING	45	3
TOTAL	1195	

The second category is 'complaints and disputes' where 1521 were recorded. The breakdown of 'Complaints and Disputes' received are as follows:

TYPE OF COMPLAINT/DISPUTE ⁷	TOTAL	%
LUGGAGE RELATED	368	24
DELAY	344	23
CANCELLATION	333	22
OTHER	274	18
DENIED BOARDING	120	8
NOT KNOWN ⁸	78	5
DOWNGRADING	4	0
TOTAL	1521	

The largest category in 'Information requests' is 'others' which mainly consists of requests for information relating to the terms and conditions of air carriage, such as age limits, type of

identification required; time deadlines for check-in and boarding; cancelling a booking; retrieving charges from unused tickets; luggage allowances and so on. When booking an airline ticket online (the most common way of buying airline tickets), each customer must declare that they have read and agreed to the terms and conditions before the contract with the airline can conclude.

However, information requests and complaints to ECC Net show that a lot of people do not read the terms and conditions or believe them to be unfair and this is problematic.

By far the biggest areas of complaint relate to luggage, delay and cancellation, both where the consumer is looking for advice about a particular situation and when ECC intervention is required.

It is fair to say that since the publication of the new air passenger right legislation (Reg 261/04) in February 2005, much publicity has ensured that passengers believe that they have some rights when their flight is delayed or cancelled but are unsure as to what exactly these are. In fact they generally think they are entitled to financial compensation in all instances which is not the case. This coupled with the fact that the legislation is often unclear, creates a confusing situation which is discussed in Part 5 of this Report.

It should be noted that cases relating to denied boarding are recorded as the lowest type of air travel cases received by ECC Net.

⁵Excludes Malta, Hungary, Slovakia, Slovenia

⁶Exact nature of info request not reported by Lithuania, Portugal, Belgium

⁷Excludes Malta, Hungary, Slovakia, Slovenia

⁸Exact breakdown on complaints/disputes not possible to report on for Belgium in 2005

3.2 Complaints & Disputes: Country of Air Carrier

COUNTRY OF CARRIER TOTAL⁹	NUMBER	%
IRELAND	218	17
UK	207	16
ITALY	168	13
SPAIN	145	11
GERMANY	87	7
FRANCE	68	5
NETHERLANDS	67	5
NON EU	66	5
NOT KNOWN	36	3
LATVIA	31	2
CZECH REPUBLIC	30	2
PORTUGAL	30	2
AUSTRIA	27	2
POLAND	18	1
SWEDEN	18	1
DENMARK	15	1
CANADA	12	1
USA	11	
CYPRUS	10	
BELGIUM	8	
HUNGARY	8	
GREECE	7	
FINLAND	6	
SLOVAKIA	6	
NORWAY	4	
ICELAND	4	
LUXEMBOURG	3	
MALTA	2	
SWITZERLAND	2	
LITHUANIA	1	
ESTONIA	1	
TOTAL¹⁰	1316	

The clear majority of complaints received by ECC Net are levied against airlines in two countries: Ireland and the UK, both with large low cost airlines operating via many European bases, with Italy and Spain coming in third and fourth respectively. Given that the low cost airlines in Ireland and the UK easily carry the majority of European air passengers per year, these statistics are to be expected.

⁹Excludes Malta, Hungary, Slovakia, Slovenia and information from Belgium. Also only includes French information on disputes not complaints.

¹⁰This total is less than the total "ECC-Net complaints and disputes" figure as not all the ECC's could provide this detailed information.

3.3 Complaints & disputes: Country of consumer

COUNTRY OF CONSUMER ¹¹	NUMBER	%
SPAIN	201	18
GERMANY	144	13
UK	139	13
SWEDEN	136	12
ITALY	87	8
PORTUGAL	52	5
IRELAND	50	5
FRANCE	37	3
LUXEMBOURG	35	3
POLAND	33	3
AUSTRIA	33	3
FINLAND	23	2
DENMARK	20	2
NETHERLANDS	19	2
GREECE	14	1
LATVIA	13	1
NON EU	10	1
BELGIUM	9	1
NORWAY	9	1
CZECH REPUBLIC	6	
ESTONIA	5	
CANADA	4	
LITHUANIA	3	
SLOVENIA	3	
SWITZERLAND	2	
USA	2	
HUNGARY	2	
SLOVAKIA	1	
CYPRUS	1	
NOT KNOWN	1	
ICELAND	1	
TOTAL¹²	1095	

An overview of the country of residence of the consumer from whom the complaint was made provides interesting information on travel and complaint habits, with Spanish consumers having the most complaints at 18%. Countries with smaller populations such as Sweden and Ireland appear fourth and seventh place respectively while a country with a large population like France comes below in eighth place. Apart from Poland, complainants from the newer Member States appear lower in the list and this could be attributed to less people travelling coupled with the fact that ECCs in these countries are newer than in other Member States.

¹¹Does not include information from Slovakia, Hungary, Belgium, Malta, Slovenia. Also only includes French information on disputes not complaints.

¹²The country of consumer total does not add up to that of the total of ECCNet "complaints and disputes" figure because not all ECCs could provide this information breakdown. In general the passenger will first contact the ECC based in their country of residence and then the complaint or dispute will be referred to the ECC of the country where the air carrier is based. In order to ensure no double counting, ECCs were asked when providing statistics for this question to separate those cases referred to them by another ECC and those sent to them directly by a consumer. Those referred by another ECC were then taken out of the totals.

3.4 Outcome of complaints

The following statistics indicate what happened to a consumer's complaint when they sought ECC intervention.

Of the air travel cases received by ECC Net the outcome of 27% of cases is unknown or the case is still open. A further 12% of cases received had no valid claim, which indicates the need for consumer education as well as greater clarity on air travel legislation in this area. Also included in this section are passengers who were, for instance, outside the time limit for making luggage claims.

A further 4% were referred by an ECC to a relevant ADR body and the case is still ongoing. 8% were solved when the air carrier met the consumer's claim after the ECC had been informed but prior to ECC involvement. A further 16% of all cases were successfully resolved when the air carrier met the consumer's claim via ECC intervention.

However, this also means that in 33% of all cases received, the problem was either not resolved or partially resolved. The following are the reasons why:

1. AIR CARRIER CLAIMED "EXCEPTIONAL CIRCUMSTANCES"	9%
2. AIR CARRIER DID NOT RESPOND TO CONSUMER	7%
3. AIR CARRIER MET ALL, OR PARTLY MET, REG 261/04 RESPONSIBILITIES BUT NOT A CLAIM FOR DAMAGES / EXPENSES.	6%
4. AIR CARRIER DID NOT MEET LUGGAGE CLAIM.	4%
5. AIR CARRIER MET CLAIM FOR DAMAGES / EXPENSES BUT NOT A CLAIM UNDER REG 261 / 04	3%
6. AIR CARRIER MET NONE OF THEIR RESPONSIBILITIES UNDER REG 261 / 04	2%
7. AIR CARRIER CEASED TRADING	2%
TOTAL	33%

3.5 Agencies involved in resolving cases

All the cases referred to in this Report were sent to an ECC. The ECC then assessed the case and in many cases referred them to the ECC in the country of the air carrier, for direct intervention with the airline. ECCs seek to find an amicable solution with the airline. If this fails, the ECC seeks a relevant ADR body with competence for solving an air travel complaint. In the case of air passenger rights there is also a named enforcement body (NEB) in each Member State that may be able to deal with the case. As a last resort there is the court system.

Out of those cases resolved (16%) what agencies dealt with them?

The vast majority (89%) were resolved by an ECC. A minor number of cases were eventually resolved by the national enforcement body with competence under Reg 261/04 or a relevant ADR body (3% and 4% respectively).

This indicates that the ECC Net has a proven ability to solve cases. However, as only 16% of all cases were definitely known to have been resolved it also shows a need for agencies to be involved in enforcing air passenger rights and resolving air travel complaints. This is discussed further in Part 5 of this Report.

4. Air Passenger Rights – Country by Country Breakdown

4.1 Table showing percentage of total ECC cases which related to air travel

COUNTRY	% OF TOTAL CASES 2005 (12 MONTHS)	% OF TOTAL CASES 2006- (6 MONTHS)
AUSTRIA	4.5	4
BELGIUM	6	10 ¹³
CYPRUS	10	30
CZECH REPUBLIC	10	7
DENMARK	4	3
ESTONIA	11	16
FINLAND	12	24
FRANCE	5	19
GERMANY	8	5
GREECE	12	10
HUNGARY	N/A	25
ICELAND	21	0
IRELAND	17	21
ITALY	65	38
LATVIA	47	42
LITHUANIA	30	29
LUXEMBOURG	3 ¹⁴	4 ¹⁵
NETHERLANDS	2	7
NORWAY	3	4
POLAND	22	50
PORTUGAL	11	22
SLOVAKIA	N/A	3 CASES*
SPAIN	8	12
SWEDEN	8	21
UK	13	13
*(% NOT KNOWN)		

4.2 Austria

In Austria besides the National Enforcement Body (NEB) there is an ADR body that can deal with air travel complaints but this has not been notified under EU Recommendations 98/257/EC and 2001/310/EC. While none of ECC Austria's unresolved complaints were dealt with by those bodies, ten cases were resolved successfully when transferred to another body – the Federal Ministry of Social Security, Generation and Consumer Protection, with whom ECC Austria is in regular contact. ECC Austria has also been involved in the 'Konsumentenpolitischen Forum' which has the objective of improving cooperation and information exchange between relevant organisations involved in consumer protection and the discussion of ADR development.

4.3 Belgium

There is no designated ADR body for air travel queries.

4.4 Cyprus

There is no competent ADR for air passenger rights in Cyprus. In fact in Cyprus there is not yet any ADR scheme with general competence in consumer issues. A draft law on ADR has been prepared by the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism. This is currently before the House of Representatives for final vetting.

4.5 Czech Republic

No ADR body exists that can handle such cases but the ECC Czech Republic has met with relevant Ministries and private sector experts in an effort to develop this. Meetings have also been held with the NEB.

¹³Of complaints/disputes, not of all cases

¹⁴Of complaints/disputes, not all cases

¹⁵Of complaints/disputes, not all cases

4.6 Denmark

There are two designated ADR body with jurisdiction for air travel related queries, the Travel Industry Complaint Board and the Danish Consumers Complaint Board. Although the fact that there is ADR coverage in Denmark is welcomed, the comment is made that there can be confusion and complexity brought to the issue because of the number of ADR bodies competent to act.

Interestingly the Danish ECC reported that their enforcement body had resolved 4 cases, an ADR body 2 cases and the courts one case.

The Danish ECC is involved in on-going communication with the two ADR bodies and has regular meetings with the Consumers Complaint Board.

In addition the ECC is planning a meeting for interested parties concerning air passenger rights in late autumn 2006.

4.7 Estonia

In Estonia there is no ADR body with responsibility for this area. ECC Estonia has participated in several meetings with the NEB to discuss interpretation of Regulation 261/04, to solve problems and to develop official opinions on air passenger rights.

4.8 Finland

The Finnish ECC reported a large increase in the number of air travel related queries sent to it.

Finland has three notified enforcement bodies under regulation 261/2004, one of whom is also an ADR body, the Consumer Complaints Board.

The ECC reported 5 cases that were referred to an ADR/enforcement body in Finland. ECC Finland shares a building with the enforcement body, which allows easy discussion regarding the appropriate party to handle a particular case.

4.9 France

There is no ADR body in France that deals with air travel complaints and ECC France also believes there is a lack of networking between the enforcement bodies (NEBs) in different countries. In the absence of a relevant ADR in France, ECC France believe that too many bodies are involved such as consumer associations, the NEB, the fraud control authority and the ECC, resulting in a lack of clarity and consistency in dealing with airlines. ECC France has been in regular contact with DG Transport and DG Health & Consumer Protection of the European Commission in order to encourage the strengthening of cooperation between the NEBs and ECC Net. In terms of the development of ADR in this sector many stakeholders have shown a willingness to discuss possibilities of establishing a relevant ADR. ECC France will continue to work on driving this development.

4.10 Germany

There is an ADR body in Germany that can deal with air passenger rights, the Schlichtungstelle Mobilität, which is hosted by Verkehrsclub Deutschland e.V. Schlichtungstelle Mobilität deals with complaints relating to luggage, delay, false and misleading information, cancellation and display of prices, for travel undertaken by plane, train or bus. Package travel and transport of goods fall outside their scope. In order for disputes to be accepted, the consumer must have already exhausted the complaint process of the company in question. ECC Germany was able to solve 3 air travel disputes using this ADR body which is positive. However, it should be noted that not all German airlines co-operate with Schlichtungstelle Mobilität, thus leaving a gap in the available dispute resolution mechanisms in this sector.

4.11 Greece

There is no designated ADR body for air travel queries.

The Greek ECC comments that the national enforcement body for the EU Regulation does not yet seem to have a clear understanding of their responsibilities in Greece, in order to act in favour of the consumers. There appears to be an acceptance of the airlines' response, without re-examining the claim in order to consider whether the claim is valid and take action against the airlines.

4.12 Hungary

The Hungarian ECC only opened on the 31st May 2006, and has, therefore, no recorded complaints for 2005, the period covered by this Report.

There is no designated ADR body for air travel queries but arbitration boards in Hungary do have the right to arbitrate in air travel related cases.

4.13 Iceland

The percentage figures listed in the above table need to be seen in the context that ECC Iceland has very few cases. For example from July to September 2006, ECC Iceland dealt with 2 cases out of a total of 9, which represents 22% of all cases. It thus seems that the number of air travel complaints they will receive in 2006 will actually surpass those received in 2005.

Iceland has a designated ADR body handling air travel related queries, the Ruling Committee in Travel Industry Matters. ECC Iceland has found it helpful to be able to contact the enforcement body to gather information on their interpretation of 261/2004.

4.14 Ireland

Since the Irish NEB with responsibility for enforcing Reg 261/04 was announced in Spring 2005, ECC Dublin has had three meetings with the NEB. Possible overlaps in case work and cooperative measures were discussed. As the NEB only deals with cases where the instances happen on Irish soil, the majority of ECC cases fall outside of this remit and so cannot be forwarded to the NEB for further consideration. Nonetheless, it was agreed that top line statistics would be forwarded to the NEB for information purposes and that information on their role would be given to consumers.

In Ireland there is no ADR body dealing with air travel. In order to encourage discussion regarding the development of ADR in this sector, In February 2005, ECC Ireland published a report detailing air travel cases received in 2003/2004 and highlighted the lack of an ADR to deal with unresolved cases. In addition, ECC Ireland commissioned market research which discovered: a low complaint rate when problems occurred; dissatisfaction among passengers who pursued complaints and a lack of

knowledge of air passenger rights. The report and market research served as background documents for initial discussion with the Department of Enterprise, Trade & Employment in relation to ADR development. Furthermore, meetings were held with two Irish airlines in relation to ADR development in the sector. Subsequent follow-up has not yet yielded further development.

4.15 Italy

ECC Italy report that as a percentage of overall cases, air travel complaints had decreased and this relates to a decrease in the number of overall cases. In fact the number of complaints relating to air passenger rights actually increased in the first six months of 2006 and continues to do so in the second half of the year.

Other than the NEB there is no ADR body for air passenger cases in Italy although ECC Italy did successfully resolve one case via the Chamber of National and International Arbitration in Milan (RisolviOnline), following meetings and cooperation developed on ECC Italy's initiative.

4.16 Latvia

ECC Latvia have had seminars, meetings and discussions about Regulation 261/2004 and other current issues and problems relating to air passenger rights with the Latvian Consumer Rights Protection Centre (CRPC).

In relation to a relevant ADR body, the CRPC is an ADR body but has not yet been nominated under either of the two Commission Recommendations on arbitration and mediation.

4.17 Lithuania

There is currently no ADR body in Lithuania dealing with air passenger rights. ECC Lithuania held a seminar with the Civil Aviation Administration and the National Consumer Rights Protection Board at which the main problems were discussed, and a proposal to establish an ADR made. In addition ECC Lithuania is a member of a working group established to develop draft rules for the carriage of passengers, baggage, parcels and goods by air. The other members of the group are the Civil Aviation Administration, the NCRPB (the national consumer agency), and non-governmental consumer associations. Having assessed the issues, the working group have decided to draft the new rules and to present them to the Ministry of Communication of the Republic of Lithuania.

4.18 Luxembourg

There is no designated ADR body for air travel queries.

4.19 The Netherlands

There is no designated ADR body for air travel queries.

In October 2005, a meeting was held with the 261/2004 enforcement body which allowed both parties to introduce themselves and learn more about each other's work. In 2006, the ECC has developed close relations with the Dutch Foundation for Consumer Complaints Board. There is now strong support among consumer complaint stakeholders for the establishment of an ADR body covering air passenger complaints. This suggestion is now being taken further.

In 2005 the Dutch Consumer Complaints Board for the Travel Industry delivered a binding decision, involving a Dutch consumer's claim towards a Dutch tour operator in the case of a delayed flight.

4.20 Norway

Norway has two ADR bodies who can investigate air passenger cases, The Board on Disputes concerning Package Tours and The Board on Disputes concerning scheduled flights. The latter accepts cases involving Norwegian airline companies, and received 80 complaints from consumers in 2005.

ECC Norway attended a meeting in May 2006 regarding Air Passenger Rights. Participating in the meeting were representatives from the Enforcement Body, the Board on Disputes concerning Package Tours, the Board on Disputes concerning Scheduled Flights, the Consumer Ombudsman and the regional office of the Consumer Council dealing with travel issues. ECC Norway also participates in a reference group evaluating the Norwegian ADR system. The results are expected by December 2006.

In addition ECC Norway has agreed to send a copy of all air passenger complaints concerning the EU Regulation to the enforcement body.

4.21 Poland

ECC Poland have had two meetings with the Civil Aviation Office who are the NEB with responsibility under Reg 261/04.

There is no ADR body for air travel in Poland and ECC Poland has begun discussions with the Civil Aviation Office regarding the possibility of establishing an ADR scheme within the NEB.

4.22 Portugal

In Portugal all the notified General Arbitration Centres are competent to deal with air transport complaints.

Portugal reported the resolution of 6 cases via the enforcement body and 5 via an ADR body, which was one of the highest numbers recorded.

ECC Portugal has had two meetings with the Air Transport National Regulator (INAC), in order to settle procedures on complaint handling between the Regulator and the ECC. It was established that the ECC would send all claims received that fall under the regulator competence and INAC would send to the ECC all cross-border complaints concerning luggage or the Montreal Convention.

They have also established a direct contact with the person responsible for complaint handling, which has facilitated feedback on the complaints sent.

The Portuguese ADR system is not sectoral, in that almost every Arbitration Centre has a general competence. A proposal has been made for the creation of a national ADR body which would help to settle disputes under the Montreal Convention.

4.23 Slovakia

As ECC Slovakia was established in May 2006, no statistics exist for 2005.

ECC Slovakia notes that there is currently comparatively low air traffic in Slovakia.

There is no ADR for air travel in Slovakia. The Slovak Trade Inspectorate who is the NEB with enforcement powers under Reg 261/04, have carried out inspections at all Slovakian airports and of Slovakian airlines. No infringements were discovered.

4.24 Spain

The NEB in Spain is the General Direction of Civil Aviation Body of the Ministry of Public Works. The ECC planned two meetings with them in late autumn 2006.

There is no ADR in Spain with specific competence for air travel complaints. However, in Spain ADRs are established according to territorial divisions rather than by sectors. This means that any of the ADRs can be used for air travel complaints, if the air carrier agrees to participate.

With regard to encouraging the development of dispute resolution in this area, in June 2006, ECC Spain organised a seminar on the topic of air passenger rights where discussions were held with consumer associations, Spanish airline representatives and the Spanish Airport and Aerial Navigation body.

4.25 Sweden

In Sweden there is a designated ADR body for air travel, the National Board for Consumer Complaints. This is obviously of great use as in 2005, 35% of air travel cases were referred to them.

The Swedish enforcement body, the Swedish Consumer Agency, is the ECC host organisation, which allows for frequent informal meetings. In addition a formal meeting was held in March 2006 with the ECC, the National Board for Consumer Complaints and the Consumer Agency to discuss the conclusions from the European Commission's meeting with the National Enforcement Bodies in February 06.

4.26 UK

There is no designated ADR body for air travel related queries.

The ECC has met with the UK Enforcement Body for 261/2004 and further meetings with interested bodies are planned.

5. Overall Problems in Resolving Air Travel Claims for Consumers

5.1 Luggage/baggage claims

During 2005, 22% of all ECC information requests and 24% of complaints and disputes related to problems with luggage.

The Montreal Convention has very strict rules about the relevant time limits that a consumer has in bringing a claim for lost, delayed or damaged luggage. Most passengers fill in a Property Irregularity Report (PIR) at the airport when they discover their luggage to be damaged or missing, but few realise that a subsequent letter of complaint must be sent to the airline within specific time limits in order to be eligible for compensation.

The time limits are :-

- For damaged bags and items that are missing from baggage, the time limit is 7 days.
- For delayed baggage, the time limit is 21 days from the time when a bag has been delivered.
- For lost luggage there is no set time limit, but the advice is to write as soon as possible after 21 days.

Many consumers report problems in proving the value of the damaged or lost luggage. Few people keep receipts for clothes, luggage or other articles for months or years in case it is subsequently lost or damaged on a flight. The expectation of most consumers, and what they believe they are paying for, is that their luggage will arrive at the destination with them and in one piece.



A Portuguese consumer sought help from the ECC, presenting a claim against a Spanish operator, IBERIA, for lost luggage. The consumer presented the claim at Madrid airport and was told he would have to wait for a decision. No out of pocket expenses were given to the passenger. During his 5 day stay in Madrid the luggage was not delivered.

Back in Portugal, the consumer asked for ECC help in order to obtain compensation for:

- *the costs of emergency items the consumer had to purchase e.g. clothes (the consumer presented invoices in the value of €115)*
- *the loss of the other articles the consumer had in the luggage and the cost of the suitcase.*

With the help of the ECC network the consumer received the amount of €600. Taking into account the value of the suitcase and of the other items the consumer lost, this was felt to be an inadequate compensation; but there was no proof for the value of the items in the luggage.

For travellers who are abroad for 2 or 3 weeks and whose luggage is damaged or lost on the outward journey, the time limits imposed by the Montreal Convention can cause real problems and mean that they lose their right to claim from the air carrier. Furthermore, how many passengers travel with paper, pen and the required details, ready to make a luggage claim whilst on holiday? As one ECC commented "If the luggage is lost, how can the consumer prove the value of his suitcase and the items in it?"



In one case dealt by the ECC Cyprus, a consumer did not retain the receipts of clothing bought when her luggage was delayed and her claim was thus rejected.

In other instances even if the value of the lost/damaged luggage or other checked item can be proved, it has been observed that airlines very rarely compensate the consumers with a sum equivalent to the item's value. In addition, because there is no precedent under the Montreal Convention in relation either to the damages that may be claimed, or whether receipts are necessary, it can be very difficult to make a strong argument on behalf of the consumer.

12% of all ECC complaints and disputes in 2005 involved cases where the consumer "had no valid claim or was outside of the relevant time limit" and approximately half of these related to luggage claims that were outside the Montreal Convention time limits.

The Montreal Convention states that claims can be made of up to 1,000 Special Drawing Rights (SDR)¹⁶ which is approximately €1,165. There are no set regulations stating how the level of compensation payments for delayed, lost or damaged luggage should be calculated. In general most airlines take the view that once your bag has turned up you will have future use of the contents. Some airlines offer immediate one-off cash payments at a set amount to cover emergency purchases until the delayed bag is delivered. Others will pay a set amount per day, up to a maximum number of days. Other airlines do not make immediate cash payments, but prefer to reimburse a passenger's expenditure on essential purchases, and will often therefore insist on seeing receipts.

In the event of any items going missing from luggage, it can be very difficult to get any compensation; often because it is almost impossible to prove that the items were there in the first place.

Many airlines have a clause in their terms and conditions saying that they do not accept

responsibility for perishable or valuable items e.g. cameras and jewellery. As a result, if these items go missing an airline may well argue that the consumer has no claim against the carrier. We may argue that such exclusions are not allowable within the Montreal Convention, but pursuing a claim would be likely to involve legal action. (Please see later note with regard to the problems involved in taking cross-border legal action, section 5.6).

At the time of writing (Oct 2006), however, it has been announced that the UK's Office of Fair Trading (OFT) has secured changes to the terms and conditions employed by Ryanair in relation to baggage. Ryanair are to remove the exclusion of liability for damage to sporting equipment, infant equipment, medical or mobility equipment and musical instruments. Further, improvements are to be made to their terms and conditions regarding claims for lost luggage, as the OFT considered that the airline's practice had gone beyond the rules of the Montreal Convention. This is most certainly good news, and hopefully will set a precedent for other airlines and for the rulings of other enforcement bodies.

¹⁶The SDR currency is based on a basket of international currencies. Exchange rates change daily. For more information go to www.imf.org



Recommendations

- That time limits for making a claim for damaged/delayed luggage are extended to 6 weeks, or
- That completion of the Property Irregularity Report counts as an initial claim in respect of delayed or damaged luggage, so giving passengers time when they get home to contact the air carrier and make a more detailed claim.
- Where people can prove the exact value of items lost or damaged this information should be taken into account and the full amount paid out by air carriers.
- Where a receipt or other proof of the value for an item are not available, standard figures agreed with insurance representatives for clothing and other items should be accepted by air carriers.
- That there should be an agreement within the industry on a policy for the compensation payments applicable in the event of delayed baggage so that there is some certainty for passengers in this situation.
- Following the recent OFT ruling, all airlines should review and amend if necessary, their terms and conditions relating to baggage claims.



5.2 EU Regulation 261/2004 – Denied boarding, cancellation & delay

There has been denied boarding legislation within Europe since 1991 under EC 295/91. This legislation was introduced specifically to combat the problem of deliberate overbooking by airlines which meant passengers were “bumped” off flights.

EU Regulation 261/2004 further consolidated this earlier legislation and provided rights of compensation and for the refund of the price of their ticket for passengers who were “denied boarding”. (However, the additional compensation set out in the Regulation does not apply to cases of cancellation or delay)

During 2005, information requests regarding denied boarding represented 3% of the ECC Net total air travel related queries and 8% of our total complaints and disputes.



A Spanish client travelling with a UK carrier sought assistance as they had arrived in good time to check in but had been denied boarding. When the air carrier was challenged about this and compensation sought as per 261/2004, the carrier stated that the client had been late in checking-in. This became a case of one person's word against another's.

EU Regulation 261/2004 introduced new rules in relation to delay and cancellation. During 2005, information requests regarding delays represented 23% and cancellation 18% of total ECC Net air travel related queries. Queries regarding delays made up 23% of total complaints and disputes, with cases involving cancellation making up 22% of total ECC Net complaints and disputes.

It is therefore the delay and cancellation aspect of the Regulation introduced in February 2005,

which has caused consumers seeking assistance from ECC Net most problems.

What the Regulation says:

Delay

Regulation 261/2004 in general states that in the event of delay of over two hours, a passenger is entitled to refreshments and telephone calls. Once the delay is over 5 hours or overnight, passengers are in addition entitled to hotel accommodation and refund of their ticket if they decide not to travel.

Cancellation

Regulation 261/2004 in general states that in the event of cancellation of a flight by the air carrier within 14 days of the due departure date, a consumer is entitled to a refund of the ticket not used, rerouting and a set level of compensation depending on the length of the flight.

Please note that the information given above is not a full reflection of a consumer's rights under 261/2004 but rather an indication only, for the purposes of this summary of problems consumers have experienced.

Problems

The ECC network is aware of a great deal of confusion amongst consumers about exactly what their rights are in relation to the EU Regulation in the event of delay or cancellation.

Many consumers feel that they are entitled to compensation in the event of delay as well as cancellation. The rules are complicated and can be difficult to put succinctly into leaflets and factsheet, as the Commission found out¹⁷.

As an MEP wrote to the UK ECC :-



"The constituent in question suffered a 10 hour delay on an Air Malta flight from Tenerife in late March this year. Once he finally arrived back home, he obtained a copy of the European Commission's 'Air Passenger Rights' leaflet. In the section entitled 'long delays', he noticed that as well as providing meals and refreshments, "when the delay is 5 hours or more, the airline must also offer to refund your ticket..." Convinced he was entitled to compensation, my constituent got in contact with Air Malta.

Much to his surprise, he received a reply from the airline refusing to compensate him. He subsequently discovered, after approaching his local CAB that the ticket refund requirement in the new regulation only applies "if the passenger decides not to travel". Of course, no mention of this proviso appears in the Commission's information leaflet."

The following case also involves a problem with the same leaflet, and also highlights a further difficulty with the legislation i.e. when does a delay become a cancellation? Many consumers seeking ECC assistance feel that a delay of more than 12 or 24 hours certainly constitutes a cancellation. The distinction is important as it can mean the difference between receiving assistance with refreshments or receiving a lump sum level of compensation.



Client was delayed for 29 hours. He had written to the carrier seeking a refund of his ticket based on his reading of an EU air passenger rights leaflet under the heading long delays "it states when the delay is 5 hours or more, the airline must also offer to refund your ticket". The air carrier had correctly pointed out that he had travelled back with the carrier and so no refund was due.

¹⁷The Commission has acknowledged that the leaflet referred to was inaccurate and will be amended.

Clients contacting ECC Net also complain about the lack of information available from air carriers in the event of delays or cancellation as well as about the often misleading information given to them about their rights.



ECC Ireland highlighted one passenger's experience – Their flight was delayed by over 12 hours as a result of the plane's alleged technical defects. The complainant and his family were not at any stage offered food/refreshments, or other entitlements under Regulation 261/2004. Further, in view of the fact that the delay was for over 5 hours, they were not offered reimbursement of the price of the flight if they decided not to travel, which is guaranteed under 6(c)(iii) and 8(1)(a). After over 6 months since their return and upon intervention by ECC Ireland, the airline finally awarded for properly receipted expenses.

Furthermore, despite the fact that the airline could not be said to have taken all reasonable measures to avoid the delay (by providing an alternative airplane), no compensation under the Montreal convention was offered, or paid.

One consumer complaining of an UK based air carrier told us:



“Most of the time there was no-one to speak to about this and the reps dealing with the airlines were not interested and said that they couldn't help! We were told, after we asked, that if we wanted to complain we needed to do so at this end. The stewardess on the plane said that we were not entitled to our money back or compensation as it was a charter flight and the new EU rules did not apply.”

ECC clients complain about airlines not offering hotel accommodation/refreshments up front when a flight is cancelled or delayed, but instead asking consumers to keep receipts and apply for reimbursement afterwards. It is of course much harder for a consumer to contact an air carrier when they have returned home and costly to do so in a cross-border context. Often when there are just refreshments involved the consumer will decide that it is not worth the hassle; and so will not try to claim for the reimbursement. This action by the air carrier contravenes Regulation 261/2004, but saves the airline money.



ECC Portugal told us of one of their cases where a Portuguese consumer had a flight from Lisbon to Barcelona scheduled for 8am. After he checked in he was informed that flight 123 was delayed. The operator gave the consumer a voucher for a drink and a sandwich. The consumer took the flight at 12am on a flight with the same number, which by coincidence was at the same time as another flight, 456. Information was given that the flight 456 had been cancelled and all passengers from both flights caught the 123 flight. As you can note, passengers with the cancelled flight (456) did not claim, because they were on a flight that departed at the same time they were supposed to; so no compensation or assistance was offered to them. For those on flight 123, nothing other than a drink and a sandwich was offered.

General consumer confusion about the Regulation, together with lack of assistance at airports, is summed up in one query sent to the UK ECC:



"I am somewhat confused about whether I can claim for compensation, under EU Regulation 261/2004, for the 5 hour + flight delay I endured on Saturday. My flight should have departed at 02.10 and we finally boarded at 07.30 after arriving at Tenerife South at 23.30 on the Friday. All I received was a voucher for 6 euros (not enough to purchase a sandwich and hot drink). There was no offer of communication assistance, or assistance of any sort. I understood from posters at the airport that I would be able to obtain a refund for the flight, but after looking at some information re the above regulation I am not so sure."

A further example of an air carrier not providing full information nor carrying out the full obligations imposed by 261/2004 is from a UK based passenger of an Irish based air carrier :-



"As OAP's in our mid seventies we were surprised and upset to find no advice or assistance from staff to find our way back to Manchester airport when our return flight was cancelled at the last minute. All compatible flights were gone when we were told the flight was cancelled and the next one would be a week later. As we could not stay in Spain another week we took a flight to Prestwick which was the only flight available back to the UK. We were not given any help on arriving at a cold and deserted airport and had to spend the night on benches until 5.30am when we caught the first available train to Glasgow central station and consequently a coach to Manchester. On arriving at Manchester we telephoned a neighbour who came to Manchester to collect us. A two and a half hour maximum journey took us 22 hours and we arrived home much traumatized."



Recommendations

- Large sections of EU Regulation 261/2004 should be more clearly defined and simplified where possible
- Delays of over 24 hours should be defined as a cancellation within the Regulation
- In the event of delay, and where an air carrier does not provide refreshments and assistance as laid down in 261/2004, there should be a penalty payment levied on the carrier by the Enforcement Body to prevent some air carriers trying to avoid their obligations; for example, by asking passengers to write in with receipts to claim payment.
- Article 14 of the Regulation imparts an obligation on air carriers to inform passengers of their rights in terms of a notice at check-in and to give individual notices to passengers in the event of cancellation/delay or denied boarding. ECC Net experience is that this is not happening consistently, and yet no action is being taken against the air carriers. Penalty fines against the air carriers who breach this Regulation might encourage greater compliance with the law.



5.3 “Exceptional circumstances” claims

EU Regulation 261/2004 allows for an air carrier to argue that their obligations in certain circumstances should be limited or excluded, and that the right to compensation in the case of cancellation on the part of the consumer is lost in cases where “an event has been caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken”.

The sorts of things that this would cover and which are specifically listed in the Regulation include:

- Political instability
- Weather conditions
- Security risks
- Strikes

In many of the cases handled by the ECC Network during 2005, one of the main problems has been the interpretation of this clause by the airlines. Passengers themselves, of course, would not want air safety to be compromised; but the suspicion is that the defence of “exceptional circumstances” is a “get out of jail free” card played by airlines in far too many situations in order to avoid paying the compensation payments, which are legislated for in the event of a cancellation. In our survey the air carrier claimed “exceptional circumstances” in at least 9% of the total complaints and disputes handled by ECC Net.



ECC Ireland detailed the following example. A party of 8 arrived at a French airport on their homeward journey, where they encountered an unstaffed check-in desk. Upon approaching the Airport's information desk they are informed that their flight, the only one that day, has been cancelled. No airline personnel were present, and the party were unable to contact the airline's own dedicated customer services line.

The group were forced to make other arrangements to return to Ireland, costing them many times the cost of the original flight, not to mention payment for meals, taxis, telephone calls, car hire etc. At no stage were they contacted by the airline to offer them their entitlements under Regulation 261/2004. Further, the group were not offered damages for added expenses incurred in booking the flight. Following correspondence with the airline, the latter offered the excuse that none is due since “exceptional circumstances” existed, namely a lack of fire cover; thus taking the defence to claims under the Recommendation to extremes. Eventually, after intervention by ECC Ireland and repeated letters, the complainants received compensation: a refund of the value of the original flight (a fraction of the price of the flight booked in lieu) and reasonable expenses for food/refreshments, phone calls etc. But this was paid only to the extent to which the parties had retained and could present their original receipts.

It can also be extremely difficult to obtain adjudication on whether an air carrier's use of “exceptional circumstances” is correct. The phrase is not defined within the Regulation, and in the experience of the ECC Net the national enforcement bodies are not challenging air carriers. This leaves consumers with little choice, in the event of there being no appropriate ADR body, but to accept the decision of the air carrier, or to take legal action. As discussed later in this section, taking cross-border legal

action is not a practical possibility for most consumers in this situation.

Many ECCs, in their response to the questionnaire, commented that in their experience, air carriers invoke all kinds of reasons why they shouldn't give compensation to the consumer, why they don't reply at all, or why they give a very limited amount of compensation. In particular the "excuses" of technical problems, weather and security measures are often used to exclude responsibility because they could be considered as 'exceptional circumstances'. It is almost impossible for the consumer to research or to establish arguments/evidence by themselves in order to challenge an air carrier who uses the reason of "exceptional circumstances" as a defence.

One passenger of an Irish low cost carrier told us:



My wife, my twin 2-year old sons and mother-in-law were on a flight which was initially delayed and then cancelled. No representative from the carrier was available at the airport and no information was relayed to any of the passengers as to why the flight was delayed. None of the assistance specified under the EU Regulation was provided – a simple heads up as to what was happening would have helped a little, instead no information was provided at all!!! After several lengthy conversations with the carrier, and the Italian Flight Enforcement Agency, my family were eventually offered another flight the next evening, 24 hours after the initial flight. In the meantime we incurred costs of a taxi back to the hotel where we were staying, the hotel room for the night and food and drink, totalling 200 euros or more. This does not include the calls made from our home address by myself to the carrier and several agencies in both UK and Italy, the cost of which I will not know until my next bill arrives.



The Greek ECC told us of one situation where "Consumers who were travelling from Britain to Greece faced a cancelled flight situation due to non admittance of staff (not a strike situation). The airline claimed "exceptional circumstances". However we believe that it is solely airlines' responsibility to arrange their staff schedules in order to meet the flight schedule."

In another case highlighted by the Greek ECC, "several Greek consumers requested compensation for a cancelled flight but the airline claimed "exceptional circumstances". However the consumers provided ECC Greece with a compensation receipt of a passenger of the same flight who requested and was granted compensation at the airport at the time of the incident. The airline upon seeing this paper changed its stance, and granted compensation for all the passengers."

Even where a consumer manages to obtain evidence with which to challenge an air carrier there is no guarantee that they will win their case. A Spanish consumer was referred to the UK ECC with a complaint against a UK low cost carrier:



The client's flight had been cancelled and they had already tried to claim reimbursement for expenses incurred as well as the compensation level listed within 261/2004. They had had no success with the air carrier who claimed the reason for the cancellation was "bad weather". The UK ECC contacted the air carrier to put forward the client's rights and enclosed a copy of information lodged on Eurometeo Web, showing good weather conditions listed on the day concerned. The air carrier reimbursed expenses; but, continued to claim exceptional circumstances, and refused to pay the compensation level due.

The use of "exceptional circumstances" on the evidence sent to ECCs indicates that there is a lack of clarity about what it covers. In addition there appears to be no guidance about the level of evidence, or on whom the onus lies to prove exceptional circumstances. Without this, the interpretation of the legislation is clearly weighted against the passenger who does not have access to detailed weather reports or air traffic reports.



Recommendations

- The Enforcement Bodies designated under the Regulation should be placed in a position to investigate claims of "exceptional circumstances" and weigh up the evidence. In doing so a body of case law or decisions would be built up, which would provide some guidance on the interpretation of the Regulation, and provide increased clarity for the air passenger and adviser.



5.4 Enforcement bodies

EU regulation 261/2004 under Article 16 states "Each Member State shall designate a body responsible for the enforcement of this Regulation as regards flights situated on its territory and flights from a third country to such airports. Where appropriate this body shall take the measures necessary to ensure that the rights of passengers are respected... Without prejudice... each passenger may complain to any body designated under para 1, or to any other competent body designated by a Member State, about an alleged infringement of this Regulation at any airport situated on the territory of a Member State or concerning any flight from a third country to an airport situated on that territory."

Of the 409 complaints and disputes where an ECC knew which agencies had been involved in the resolution of an air passenger query, only 3% were resolved via an Enforcement Body, 4% by an ADR body and 89% via an ECC.

This reflects the difficulty which ECCs, and consumers approaching ECCs, have experienced when asking the named National Enforcement Bodies (NEBs) to assist in resolving passenger queries and enforcing Regulation 261/2004 in the area of cross-border air travel.

In the cases examined from 2005, the problem seemed to arise from the lack of coverage by the enforcement bodies.

The Greek ECC commented "The National Enforcement Body in Greece does not yet seem to have a clear understanding of their responsibilities in Greece, in order to act in favour of the consumers. They just accept the airlines' response, without re-examining the claim in order to consider whether the claim is valid and whether to take action against the airlines." This is reflected in

comments made by other ECC's; in particular, in reporting the problems experienced by passengers trying to seek rulings when air carriers claim that "exceptional circumstances" apply. The Enforcement bodies do not appear to be investigating or challenging air carriers claims of "exceptional circumstances", nor publishing their adjudications in these matters.

A UK passenger of an Irish low cost carrier contacted the ECC with the following problem:



We checked in for our 22:40 flight. At approximately midnight, we were informed that the flight was cancelled and security then promptly ushered passengers out of the departure area. No further help or information was given by the carrier. My bags were dumped outside the airport and I was told that there were no alternative flight for five days and no alternative accommodation or travel arrangements were offered. We were left to make our own arrangements to get home, incurring €707.18 costs.

The ECC wrote to the carrier asking:-

- *Why no assistance was given to the clients as per Regulation 261/2004*
- *Why they were not informed of their rights under 261/2004*
- *For an offer of compensation in keeping with Regulation 261/2004, and to cover the additional expenses incurred and detailed above.*

The air carrier refused to make any payment at first, then offered reimbursement of some expenses – but not the full amount asked for or the compensation element. The matter was then referred to the UK Enforcement Body, who also contacted the air carrier, asking the same questions as the ECC had. Eventually the Enforcement Body wrote to the client explaining that the air carrier had written to them refusing to pay compensation under 261/2004 and that the files would be closed as they had no evidence to challenge the air carrier.

The Commission's interpretation as to who the competent authority is in a particular case, often differs from the opinion of the enforcement authorities themselves. There appears to be confusion, and there is no authority to determine the level of coverage of the enforcement bodies. This is a particular problem for passengers in a cross-border context. Different enforcement bodies appear to take different views as to whether they are responsible for complaints from passengers based outside the Member State where the enforcement body is based. This in many instances leaves the cross-border air traveller (surely the majority of passengers) disenfranchised under the Regulation.



The UK ECC received a referral from the Greek ECC regarding a UK air carrier. The flight had been cancelled because "the flight crew that were scheduled to operate this flight were out of position" and was claiming "exceptional circumstances" and so no claim for compensation payments was due to the passenger.

The UK ECC wrote to the air carrier on a number of occasions challenging this, but received the same response from the carrier. The ECC then referred the matter to the UK Enforcement body asking for adjudication on the use of "exceptional circumstances". The relevant authority then responded saying "... we provide a mediation service only for UK residents and where the flight was contracted in the UK or where the first leg of the journey starts from a UK airport. I am afraid that we will not therefore take up your complaint on your behalf" and referring the UK ECC to the Greek enforcement authority. The ECC tried to challenge this, but were again referred to the Greek Enforcement body.

The UK ECC then wrote to the Greek Enforcement body and received the following response "... Consequently, since the incident took place in Heathrow, your client's claim must be forwarded to the UK Civil Aviation Authority".

The Italian ECC told us that the enforcement body in Italy is inefficient and takes too long to answer consumers' requests.

It would appear from the individual contacts that each ECC has with its own enforcement body, that many of them are under-resourced and unable to deal with the responsibilities given them under the EC Regulation.

The Irish ECC noted, "As the NEB only deals with complaints that arise from instances that occur in Ireland, they are not dealing solely with complaints against Irish airlines. This means they do not have a complete picture of the Irish airlines' complaint handling procedures. In addition the NEB are poorly resourced and have not taken any court action. It appears as if the NEB does not have any teeth, and are not responsible for a lot of the actions the Irish airlines take."

The enforcement bodies appointed for the enforcement of Regulation 2004/261 should be competent (according to their interpretation of "competent") when the take-off occurs on their territory. Yet, they have no influence on airlines based in another EU country. This is a contributory factor in the atmosphere of confusion over the coverage and responsibilities of each Enforcement body. There also appears to be a lack of networking and cooperation between Member States' Enforcement bodies, which is to the detriment of passengers in resolving air passenger problems.

The ECC-Net is an advice, information and assistance network with no powers to "force" an airline company to respect the Regulation or to pay compensation claims. If the enforcement bodies are not undertaking this role, and if there are no effective ADR bodies, as there are not in most Member States, then the air passenger is left only with the option of going to court. This is not practical course of action, however, for the reasons discussed later.



Recommendations

- Air passengers with a complaint are being referred from one country's named enforcement body to another without any of them taking responsibility for investigating claims. There needs to be agreement between the various designated enforcement bodies in relation to their jurisdiction. If this cannot be agreed between them the Commission should be asked to map the coverage to ensure that air passengers are protected.
- Member States have designated that a body should be authorised to be responsible for the enforcement of the Regulation, but it does not appear that all Member States have ensured that each body has the resources required to perform its responsibilities adequately. As a result passengers are being effectively disenfranchised.
- Under Article 16 of the Regulation, "the sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive". We are not aware of any body of sanctions against air carriers which meets this aim, but there is considerable body of evidence of problems experienced by air passengers who have no means to seek resolution.



5.5 Claims for expenses

In addition to the rights detailed above under Regulation 261/2004 in respect of denied boarding, downgrading, cancellation and delay, ECCs receive a number of queries from passengers wanting to know if they can claim for additional expenses they have incurred as a result of the delay or cancellation of the flight, rather than because they have been denied boarding.

Claims for these additional expenses do not come within the EU Regulation, but instead via the Montreal Convention.

Under Article 19 of the Montreal Convention a “carrier is liable for damage occasioned by delay in the carriage of air passengers, baggage or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to make such measures.”

The sorts of damages or expenses that may be claimed in respect of a delay would be e.g., the costs of accommodation or transportation if a passenger missed their only connecting flight because the arrival of their flight was delayed.

In 6% of the claims and disputes cases handled by the ECC Net, the air carrier met all, or partly met their 261/2004 responsibilities; but did not meet a claim for the consequential damages/expenses incurred.



“I was due to fly back from my holiday in Spain on Tuesday. My partner and I were told our flight had been cancelled due to strikes in France. The airline offered us a refund or to travel on the next available flight. The next flight back was on Friday night – 3 days later. So we decided to fly back to Liverpool on the Thursday as this was only two days’ delay, although it would cost us a further £50 to get back home. The air carrier offered us no other help, and we were stranded at the airport with no hotel and no transfers to anywhere. Are we due any compensation from the airline, as this resulted in a lot of stress and £500 additional costs on accommodation, transfers, phone bills and food?”

An airline’s liability for delay is limited to 4150 Special Drawing Rights (approx €5,000 or GB£3,407).

Many passengers will have rights under two pieces of legislation, which adds to the confusion for consumers. Several ECC’s commented that with the introduction of Regulation 261/2004, many airlines appear to “neglect their duties under the Montreal Convention – as if it had ceased to exist”.

Just as under lost or damaged luggage claims, consumers are not always aware of the importance of keeping receipts of the expenses incurred, and so therefore have problems seeking reimbursement from the airline. In addition there is no enforcement body for the Montreal Convention and so the only way of enforcing rights under it, if there is no ADR body, is via the courts, which in a cross-border context can be impractical.



One ECC client told us about the problems and additional expenses they had incurred as a result of a cancellation by their flight provider:

“I booked via the internet 2 flight only tickets and several months later received a letter cancelling the reservation. I phoned Customer Services and was told no alternatives could be given, and it was in their conditions that they could cancel for any reason. A refund was offered (taking 5 – 10 working days to process, whereas the money had left my account within one day). They have had my money for 5 months and cancelled 11 weeks before the flight. My accommodation is booked and I will have difficulty finding a low cost flight at this late date. “



Recommendations

- That claims for damages/expenses linked to delay, cancellation or denied boarding be brought within the EU Regulation
- That work be carried out to investigate the links and synergies between the Montreal Convention and EU Regulation 261/2004
- To develop an ADR body in each Member State, able to handle these claims
- That the designated Member State body responsible for the enforcement of 261/2004 also be given the power to investigate claims for damages/expenses, subject to their being given the resources adequately to undertake this additional task.



5.6 Legal action

Ultimately if the air carrier does not agree to meet a passenger's claim, e.g. for expenses, and if there is no designated ADR body, the only arbiter is the courts. This means that consumers have to make a decision as to whether they are prepared to sue the air carrier.

For example, in general a passenger has the right to sue under the Montreal Convention in cases other than death or personal injury:

- in the court of the country where the air carrier is based or has its principal place of business *or*
- where the carrier has a place of business through which the contract has been made *or*
- in the court of the country of the place of destination.

This means that the situation is legally complex where the airline is not based in the same Member State as the passenger.

The taking of legal action is outside the remit of the ECC Network and there is no other European network that can actually assist consumers in taking cross-border legal action; although the European Judicial Network provides information on the legal systems in each Member State. There are practical difficulties in taking cross-border legal action; including high costs and language differences, meaning that for most cross-border consumers legal action is not an option. This leaves them without the power to enforce their rights.

ECC Ireland is currently looking into the possibility of Irish consumers taking action in the Irish small claims court against foreign airlines who have registered offices in Ireland. Currently, if the foreign airline refuses the claim, there is nowhere else to turn as no relevant ADR body exists.

There are not many cases taken against airlines. This allows for a narrow application of the Montreal Convention and Regulation 261/2004 by the airlines. It also means that there is no body of case law developing to give guidance in the interpretation of the law, and provide some clarity for passengers, airlines and advisers.

Furthermore, there are very limited opportunities for consumers to use an ADR procedure for their air travel complaints. This is because relevant designated ADRs exist in only 8 out of the 27 European countries¹⁸.



Recommendation

- To undertake the development of effective ADR bodies in the area of air passenger rights.
- To undertake the development of practical mechanisms allowing air passengers where appropriate to take cross-border legal action against air carriers. The introduction of the proposed European small claims cross-border procedure is expected to assist consumers in this situation, although its exact impact has yet to be assessed.
- Effective advice and information resources should be provided to assist consumers with ADR or cross-border small claims procedures. The ECC network is the only European-wide network equipped with the expertise to provide this service for consumers, and so it should be ensured that the Network is properly resourced, both from national and European sources.



5.7 Connecting flights & the involvement of different airlines

ECC's have received queries from passengers who have problems in identifying which airline or National Enforcement Body is responsible with regard to connecting flights, especially where different airlines are involved in the transfer.

The Spanish ECC referred a case involving a UK tour operator and air carrier following the delay of a flight which led to the incurring of additional expenses for the client. In trying to resolve the complaint, the UK ECC was transferred from air operator to air carrier, with each denying any responsibility and referring to the other.

This kind of situation was noted by many ECC's; "Sometimes two Airlines are involved and both of them reject their responsibilities".



ECC Austria had a case involving an Irish low cost carrier. The consumer booked return tickets from Salzburg via London to Cork and back via Dublin. On the return trip, between Dublin and London, the plane developed an instrument defect and had to go back to Dublin. Eventually the plane continued its flight and passengers arrived at London STN airport ten minutes before their flight to Salzburg. There was no possibility to check in: the desk was closed and the consumers had to book a new flight early next morning.

The cost of changing the tickets was £160. It was impossible to find two double rooms either at the airport, or in the surrounding district, so the consumers had to spend the night in very uncomfortable seats at the airport. They had to put their luggage in deposit at a cost of £30 (six pieces) and

¹⁸The 27 countries consist of the 25 Member States plus Norway and Iceland. The designated ADR bodies that can deal with air travel complaints can be found in : Germany; Spain; Portugal; Norway; Sweden; Denmark; Finland; Iceland. In addition non-designated ADR bodies that can deal with air travel complaints exist in Austria, Latvia and Italy.

there were additional expenses for car parking in Salzburg for an extra day and for an evening meal. Even after the case was referred to the Irish ECC, the air carrier refused to refund the sum claimed, stating that under its contract terms and conditions the consumer wasn't entitled to compensation as the airline was a "point to point" airline and therefore did not accept any liability for lack of connections to another flight.

There are also a number of cases where the delay in one flight means that a subsequent connection is missed with all the additional inconvenience and expense that that can involve. The first air carrier has responsibilities under the Regulation 261/2004 as noted above in terms of provision of refreshments and possibly hotel accommodation; but a claim for the additional expenses would have to be under the Montreal Convention, and this can be extremely complex, with success being difficult to achieve.

5.8 Air carrier's handling of complaints

Outside of complaints about specific pieces of legislation, the ECC Net also receives complaints from passengers concerning air carriers' general complaint handling process.

An item which appears regularly in ECC in-boxes relates to the time it takes an airline to deal with complaints, which consumers feel is unreasonably long.



A German passenger flying with a UK low cost carrier in April had an item of luggage damaged. He made a claim and was told by the carrier that he would receive reimbursement for the damage in May. The UK ECC was contacted in December, as payment had still not been made. The ECC went on to write four times to the carrier over the period from December to March of the following year, without receiving a response. In the end the client gave up on his claim.

Several ECCs commented that they believe such delays actually form part of the airlines' customer service procedure, in the hope that many passengers will just give up their claim.

For many passengers the first hurdle can be establishing just how to complain and to whom. With many carriers the customer service information given on web sites is poor to non-existent. There may only be the option of an email feedback form, which can be very frustrating – especially for passengers whose first language is not the one used by the website. Other air carriers give a phone number for customer queries, but these can be charged at premium rates and so involve a passenger in additional expense when trying to take up a legitimate complaint or query.



A Swedish national living in the UK flew with a Spanish carrier and contacted the ECC to complain of the service they had received, and the problems experienced getting in touch with the carrier.

"I was subjected to a 24 hour delay when using their services Madrid to Bogotá this summer, and then a second delay of 7.5 hours on my return flight, causing added expenses as well as inconvenience as I missed my connecting flight back to the UK and had to purchase a new one.

I have repeatedly written to the carrier's customer service department, but only got one reply on the 5th of September stating that they will be in touch. It is now almost November and after repeated e-mails and phone calls no one has been in touch. I fear that they have many complaints and are trying to avoid responsibility by not replying to any correspondence. The phone line is constantly busy, even at 11 o'clock at night, which makes me believe that they do not have a functioning call centre for complaints.

I subsequently wonder how to put this complaint forward. As I have had no correspondence I have neither had an official denial for compensation."

In another example from the Portuguese ECC:



A consumer bought a ticket via the internet to fly with an Irish low cost carrier. All the steps of the contract and booking were made in Portuguese. On the day of departure the client was told that the flight was cancelled and so tried to make a claim at the airport, asking for compensation in accordance with Regulation 261/2004. She got no answer from the company and so tried to contact the customer services section of the airline where she discovered that the claim could only be accepted if she wrote in English.

The problems that individual passengers experience in trying to contact air carriers are also shared by ECC case handlers. It can be very difficult to access the company, since this may often be via a call centre, which means that a different person responds each time. This increases the difficulty of resolving complaints. Some ECCs have developed co-operation procedures with their country's airline/s, which can facilitate the swift and appropriate handling of complaints. While this is positive it should, however, be noted that even with such co-operation an ECC is still not in a position to enforce an opinion or legal interpretation on the airline, which of course is the role of the ADR body or NEB.

Again many ECC's commented that they believe that some air carriers adopt a cynical approach to complaint handling, especially with the cross-border consumer, because they suspect that the consumer won't ultimately take legal action against them. The resources required in time, effort and finance when taking legal action against big companies are not commensurate with the amount that passengers might receive.



Recommendations

- That each air carrier should be obliged to list clear contact information for dealing with customer queries, of which one should be via a written form as well as via a telephone number.
- That each air carrier should have a named liaison person within their complaints department to deal with ECC Net personnel.
- That ADR should be developed to cover air passenger rights queries in each Member State.



5.9 Other air travel related queries

We also receive many complaints about advertised ticket prices, which have subsequently increased by the time people get to the final booking stage.



One UK consumer wrote to complain about the operation of several different airlines in this regard:

I would like to complain about internet ticket sales for an airline, which has confusing hidden costs. I went to book a flight from London to Zurich: the flight was advertised at €39, but in fact, there were hidden fees of €55, making the total €94! As you can see from the screen shots attached, this is not advertised on the main page, and only becomes apparent once you have filled all the lengthy form out, and have reached the final booking page.

I think it is disgraceful that airlines add these dubious surcharges, fraudulently calling them airport taxes. All the costs should be included in the advertised price. I have had similar problems with a number of airlines¹⁹.

Another passenger booking an air ticket over the internet from an Irish low cost carrier emailed to complain to an ECC :-

“I purchased a ticket for Frankfurt on the website. Subsequently, I have discovered that “Frankfurt (Hahn)” (as written on their website) is not actually in or near to Frankfurt. The airport to which they fly is “Frankfurt Hahn” airport, which is 120 km from Frankfurt. This is misleading advertising.”

We also receive complaints about the cost and difficulty in changing tickets once booked, (usually via the internet) and of the administration fee charged, even where the change is not the passenger's fault. A UK consumer booking a flight via a German website told us:-



“I bought a flight from Amsterdam to London through an online booking company. I found a ticket valued at €57 plus taxes at €82, a total of €139.

However, the flight was processed on my credit card at a cost of €699.72, comprising a flight price at €598, plus taxes of €81.72 euros, and cancellation cost protection of €20. Once I saw that I had paid much more than I had originally been quoted for a one-way ticket, I saw that I could cancel the purchase according to their conditions, albeit with a fee of €75, by sending them an email. I got no response from my emails for two days, and also no answer on their given phone contact. Finally I spoke to a phone operator, and her supervisor promised I would be refunded the cost of my ticket minus €75. I have never received any refund. I have since sent a formal and polite letter requesting a full refund of €699.72 but I have never had a response.”

¹⁹In October 2006 proposed new Europe-wide aviation regulations were published, which have the objective of ensuring clarity in advertised air fares by obliging the airlines to show all fares as inclusive of all costs.

6. Concluding Remarks & Summary of Recommendations

In this report we have attempted to provide a statistical overview of the problems experienced by air passengers and brought to ECCs either to find out their rights or to try and obtain recourse that they have not been able to obtain elsewhere.

We have then provided a country by country overview of the proportion of total cross-border queries which air travel related problems make up and the ADR position in each Member State.

Using client case studies we then discuss in greater detail the type of problems air passengers are experiencing and bringing to the ECC Net in order to highlight the gaps in legislation or policy and have tried to identify ideas to prevent these happening in the future.

In this final section of the report we bring together all these recommendations under appropriate headings. The air travel market has seen many changes over the last decade and has meant that as Europeans we are travelling in greater numbers than ever. Various pieces of legislation are in place providing passengers with particular rights and imposing certain responsibilities on air carriers. The experiences of many air passengers seeking advice from the ECC Network show that in many cases the legislation is either not working or that there is inadequate enforcement in a cross-border context.

If these rights are really to be effective and air travellers are to have confidence that not only will their safety be prioritised but that their consumer rights will also be respected and upheld then changes are required in a number of areas.

Montreal Convention related recommendations

- That time limits for making a claim for damaged/delayed luggage are extended to 6 weeks, or
- That completion of the Property Irregularity Report counts as an initial claim in respect of delayed or damaged luggage, so giving passengers time when they get home to contact the air carrier and make a more detailed claim.
- Where people can prove the exact value of items lost or damaged this information should be taken into account and the full amount paid out by air carriers.
- Where receipts or other proof of the value for an item is not available, standard figures agreed with insurance representatives for clothing and other items should be accepted by air carriers.
- That there should be an agreement within the industry on a policy for the compensation payments applicable in the event of delayed baggage so that there is some certainty for passengers in this situation.
- Following the recent OFT ruling, all airlines should review and amend if necessary, their terms and conditions relating to baggage claims.
- That work be carried out to investigate the links and synergies between the Montreal Convention and EU Regulation 261/2004

Regulation 261/2004 related recommendations

- Large sections of EU Regulation 261/2004 should be more clearly defined and simplified where possible.
 - Delays of over 24 hours should be defined as a cancellation within the Regulation.
 - In the event of delay, and where an air carrier does not provide refreshments and assistance as laid down in 261/2004, there should be a penalty payment levied on the carrier by the Enforcement Body to prevent some air carriers trying to avoid their obligations; for example, by asking passengers to write in with receipts to claim payment.
 - Article 14 of the Regulation imparts an obligation on air carriers to inform passengers of their rights in terms of a notice at check-in and to give individual notices to passengers in the event of cancellation/delay or denied boarding. ECC experience is that this is not happening consistently, and yet no action is being taken against the air carriers. Penalty fines against the air carriers who breach this Regulation might encourage greater compliance with the law.
 - The Enforcement Bodies designated under the Regulation should be placed in a position to investigate claims of “exceptional circumstances” and weigh up the evidence. In doing so a body of case law or decisions would be built up, which would provide some guidance on the interpretation of the Regulation, and provide increased clarity for the air passenger and adviser.
 - Air passengers with a complaint are being referred from one country’s named enforcement body to another without any of them taking responsibility for investigating claims. There needs to be agreement between the various designated enforcement bodies in relation to their jurisdiction. If this cannot be agreed between them the Commission should be asked to map the coverage to ensure that air passengers are protected.
 - Member States have designated that a body should be authorised to be responsible for the enforcement of the Regulation, but it does not appear that all Member States have ensured that each body has the resources required to perform its responsibilities adequately. As a result passengers are being effectively disenfranchised.
 - Under Article 16 of the Regulation, “the sanctions laid down by Member States for infringements of this Regulation shall be effective, proportionate and dissuasive”. We are not aware of any body of sanctions against air carriers which meets this aim, but there is considerable body of evidence of problems experienced by air passengers who have no means to seek resolution.
 - That claims for damages/expenses linked to delay, cancellation or denied boarding be brought within the EU Regulation.
 - That work be carried out to investigate the links and synergies between the Montreal Convention and EU Regulation 261/2004.
 - That the designated Member State body responsible for the enforcement of 261/2004 also be given the power to investigate claims for damages/expenses, subject to their being given the resources adequately to undertake this additional task.
-

Legal/ADR related recommendations

- To undertake the development of effective ADR bodies to cover air passenger rights queries in each Member State.
- To undertake the development of practical mechanisms allowing air passengers where appropriate to take cross-border legal action against air carriers. The introduction of the proposed European small claims cross-border procedure is expected to assist consumers in this situation, although its exact impact has yet to be assessed.
- Effective advice and information resources should be provided to assist consumers with ADR or cross-border small claims procedures. The ECC network is the only European-wide network equipped with the expertise to provide this service for consumers, and so it should be ensured that the Network is properly resourced, both from national and European sources.

Air carrier customer services recommendations

- That each air carrier should be obliged to list clear contact information for dealing with customer queries, of which one should be via a written form as well as via a telephone number.
 - That each air carrier should have a named liaison person within their complaints department to deal with ECC Net personnel.
-

Appendices

Appendix a

ECC Net questionnaire

1. Name of ECC :

2. How many information requests did your ECC receive in relation to the following categories in 2005:

Delay

Cancellation

Denied boarding

Downgrading

Luggage related e.g. lost, delayed, excess baggage etc.,

Other air passenger related

Total:

For the rest of the questionnaire your answers should only relate to the number of complaints/disputes handled by your ECC.

3. How many complaints/disputes did your ECC receive in relation to the following categories in 2005:

Delay

Cancellation

Denied boarding

Downgrading

Luggage related e.g. lost, delayed, excess baggage etc.,

Other air passenger related

Total:

4. What proportion of your total cases in 2005 related to air travel?

5. Does your country have a designated ADR body (excluding the named enforcement body as per 261/2004) for flight cases?

6. Country of the air carrier

Please note the country of the air carrier involved in each air travel related complaint or dispute handled by your ECC during 2005. Please do not include information request queries.

COUNTRY OF AIR CARRIER

Please add to the list of countries where required Number of cases

UK

France

Germany

Denmark

Spain

Netherlands

Belgium

Norway

Ireland

Portugal

Canada

Malta

Italy

Switzerland

Poland

Austria

Greece

USA

Sweden

UK

7. Country of consumer

Please note the country of the consumer involved in each air travel related complaint or dispute handled by your ECC during 2005. Please do not include information request queries.

COUNTRY OF CONSUMER

Please add to the list of countries where required Number of cases

Sweden

Portugal

Germany

France

UK

Austria

Norway

Finland`

Belgium

Greece

Spain

Italy

Czech Rep

Denmark

Netherlands

Ireland

Lithuania

Malta

Luxemburg

Outside the ECC-net

Transferred cases

There are quite a lot of cases that have been transferred from one ECC to another. All cases should be included in the national statistics regardless if it's transferred or not since the purpose with that part is to present the air travel query work of every individual ECC.

However, it's important to exclude the "doubles" in the joint statistics so we need to keep track of them. Therefore it's necessary that you make a note, in the "Country of Consumer" sections, regarding how many cases that have been transferred to you and from which ECC they come from. It's not necessary to do that in the "Country of air carrier" section. We will just assume that the air carrier in question come from your country, since that's the only likely reason for another ECC to transfer a case to you.

EXAMPLE

Country of consumer	Number of cases
Sweden	20 (10 from Swedish ECC)

8. How many complaints/disputes were by the end of 2005 :-

- Resolved
- Unresolved
- Still open

9. Of the air travel complaints/disputes air travel cases handled by your ECC during 2005, please note the final results of the cases. Choose for each case the one option below which is the most applicable:

- Air line met the consumers claim
- Air line did not respond to the consumer
- Air line met the claim when contacted by the ECC
- Consumer had no valid claim
- Air line claimed "exceptional circumstances"
- Air line met responsibilities under 261/2004 but not a claim for damages/expenses under the Montreal Convention
- Air line agreed to make payment in relation to expenses but not responsibilities under 261/2004
- Luggage claim met
- Not known or still an open case

10. In resolving the case, were any of the following bodies involved :-

- Resolved on the intervention of the ECC
- Resolved on the intervention of the 261/2004 enforcement body
- Resolved on the intervention of an ADR body
- Resolved on the intervention of another body
(Please list the other bodies involved)

11. What in your opinion when trying to resolve consumer cases, are the main areas that prevent cases being resolved:

12. Please list any initiatives/work/meetings that your ECC has been involved in with the enforcement body:

13. Please list any initiatives/work/meetings that your ECC has been involved with in order to develop any ADR in the area of air travel cases:

14. Do you have any case studies that highlight particular problems consumers in your country have encountered in relation to air travel. If so please note them here

Number of cases 2006 received in the period January-June 2006 which are air passengers rights related:

MANY THANKS FOR TAKING THE TIME TO COMPLETE THIS QUESTIONNAIRE WHICH SHOULD BE RETURNED NOT LATER THAN THE 6TH SEPTEMBER 2006.^o

Appendix b

Contact list for ECCs

EUROPEAN CONSUMER CENTRES NETWORK (ECC-NET)

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BELGIUM

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CENTRE EUROPÉEN DES CONSOMMATEURS
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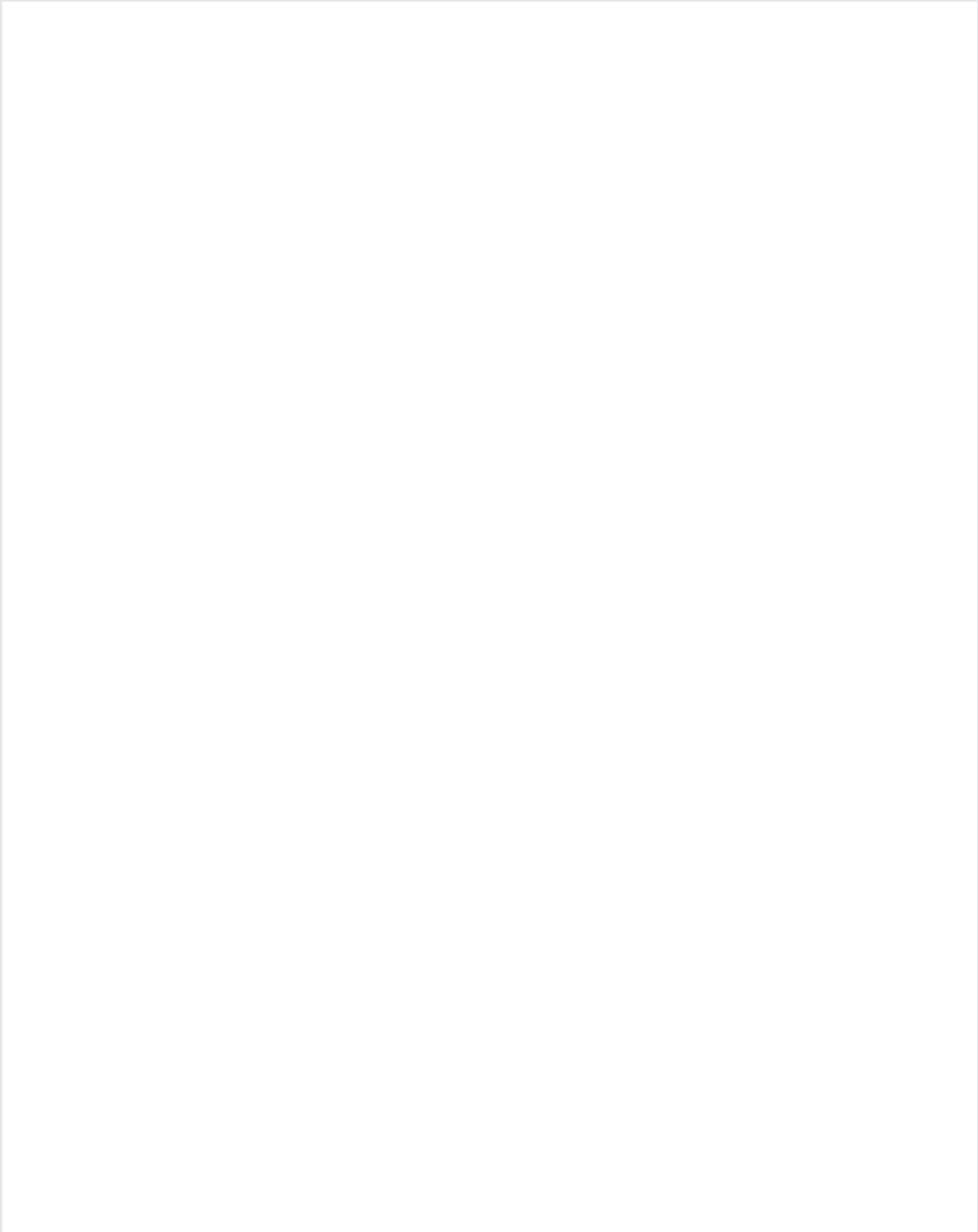
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