



Financial compensation, technical faults and time limitations

Compliance report

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Foreword by Iain Osborne

All air passengers head to the airport expecting the same thing: to arrive at their destination safe and on time. The majority of people do just that. But millions of passengers every year suffer inconvenience and expense because of flight delays and cancellations.

European regulations protect passengers when disruption occurs. They are entitled to financial compensation for cancellations and long delays that are within the airlines' control and inherent in the operation of the airline. While the regulation has been in force for 10 years now, the issue of when compensation should apply has been the subject of fierce debate, often played out in the courts and regularly making headline news.

But the Supreme Court's decision in October 2014 not to hear an appeal from Jet2 in the *Jet2 v Huzar* case provided much needed clarity for UK passengers. In effect, it meant airlines must pay compensation for disruption caused by ordinary technical faults to aircraft. The Supreme Court's decision not to hear Thomson's appeal in the *Dawson v Thomson Airways* case also cleared up the issue of how far back passengers can go when claiming for disrupted flights: they are entitled to take court action for flights going back six years¹.

So the law is clear. The highest court in the land has made its decision and passengers are right to expect airlines to abide by it. But we know of cases where passengers have still been refused compensation.

As the UK's enforcement body for passenger rights, we believe passengers have a right to know if airlines are complying with the law or not. We've reviewed the compensation policies of the top 15 airlines operating in the UK – covering around 80% of the UK market – and challenged them to see if they are abiding by the Court of Appeal's decisions.

I'm pleased to say that the vast majority of these airlines are respecting the court's decision and paying compensation. The decision of the Liverpool County Court handed down at the end of February to deny requests made by Jet2, Wizz Air and Ryanair to further stay claims pending the outcome of a case in Europe supports the actions of the majority of airlines and the position adopted by the CAA. But we were extremely disappointed to find that it appears a small number of airlines are letting their passengers down by failing to consistently pay compensation and also applying a two year limit to claims.

We were also disappointed that one airline, Aer Lingus, was uncooperative and that we were only able to gain the required assurance by using our formal information gathering powers.

¹ in England, Wales and Northern Ireland. In Scotland a five year limit applies.

...the law is clear. The highest court in the land has made its decision and passengers are right to expect airlines to abide by it

With the law clear, passengers rightly expect airlines to abide by it and expect the CAA to enforce it. We are now commencing the legal phase of our enforcement process under Part 8 of the Enterprise Act 2002 against Jet2 and Wizz Air. We are also using our Part 8 powers to obtain further information from Ryanair on their approach to assessing passenger claims for flights disrupted by technical faults.

Iain Osborne

Group Director for Regulatory Policy
Civil Aviation Authority



Introduction

1. When flights are cancelled or delayed or passengers are refused boarding, European law (Regulation EC 261/2004², referred to hereafter as 'the Regulation') provides a set of rights that apply to all those departing from UK airports and returning to the UK on a European airline.
2. The CAA, as the body responsible for enforcing these rights in the UK, has undertaken a number of steps to ensure that airlines understand their obligations and has begun a process of gaining assurance that these obligations are being met.
3. In addition to the planned programme of themed compliance reports (as initiated with this report and the compliance report on the provision of information during disruption), the CAA may also publish reports on specific issues where it feels doing so would benefit consumers.
4. This report has been compiled to assess the impact of recent court decisions. One looked at whether technical faults on an aircraft could be considered to be an extraordinary circumstance and therefore allow the airline to avoid paying compensation (in the *Jet2 v Huzar* case). The other looked at whether the time period for bringing a claim under the Regulation can be restricted (in the *Dawson v Thomson Airways* case).
5. Publishing the information in this report should allow consumers to take an informed decision when making their booking based on how they are likely to be treated if they experience disruption. Airlines may feel they have a legitimate legal argument, however we are extremely concerned that failing to consistently assess claims or limiting the time period in which a claim can be made, could result in valid claims being rejected.

² Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of the denied and of cancellation or long delay of flights

Financial compensation

Technical faults and 'extraordinary circumstances'

6. Financial compensation applies if a passenger is denied boarding, when a flight is cancelled or when a flight is delayed on arrival by 3 hours or more.
7. In cases of denied boarding, compensation is payable regardless of the reason why it occurred. However, for cancellations and long delays, compensation is not payable if the airline can prove that the disruption was caused by an 'extraordinary circumstance' and that it took reasonable measures to avoid the disruption. The Regulation does not define what is meant by an 'extraordinary circumstance' and it has been the subject of a number of legal cases in the European Courts as well as in the domestic courts of EU Member States, including the UK.
8. The issue of whether a technical problem with an aircraft, which ultimately leads to the flight being cancelled or suffering a long delay, constitutes an extraordinary circumstance has been considered by both the European Courts and also by the Court of Appeal of England and Wales.
9. In June 2014, the Court of Appeal found in the *Jet2 v Huzar* case that, for a technical problem to constitute an extraordinary circumstance, the circumstances must be out of the ordinary. The Court's view was that, although the fact that a particular technical problem may be unforeseeable, this does not mean that it is out of the ordinary or unexpected. Indeed, the Court's view was that difficult technical problems arise as a matter of course in the ordinary operation of a carrier's activity – some may be foreseeable and some not but in general they are properly described as inherent in the normal exercise of the carrier's activity.
10. Notwithstanding the *Jet2 v Huzar* judgment, European case law (in particular the *Wallentin-Hermann v Alitalia*³ case) still applies and therefore there may be technical faults that are not inherent in the ordinary operation of a carrier's activity, for example where the fault is the result of a hidden manufacturing defect, and hence such technical faults could constitute an extraordinary circumstance.

3 The Wallentin-Hermann judgment considered the issue of how far technical problems could be considered to be extraordinary circumstances and the steps airlines have to take to prove an extraordinary circumstance existed and that it took all reasonable steps to avoid the resulting disruption.

11. Jet2 asked the Supreme Court to hear an appeal in the *Jet2 v Huzar* case and, while awaiting the Supreme Court's decision on whether to hear the appeal, many airlines put passengers' claims on hold. The Supreme Court announced on 31 October 2014 that it would not hear the appeal and therefore the ruling from the Court of Appeal in the *Jet2 v Huzar* case, along with the pre-existing EU case law, applies. This position was further endorsed last month when Liverpool County Court decided not to allow airlines to stay claims pending the outcome of a case being brought in Europe⁴.
12. Annex 1 sets out the CAA's view of the legal position on financial compensation along with a brief explanation of the EU and English case law.

Time limit for making a claim

13. The Court of Appeal also heard a case which considered the time limit in England and Wales for making a claim under the Regulation. It issued a decision on the *Dawson v Thomson Airways* case in June 2014 and found that the time limit was six years from the date of the flight. Thomson Airways also asked the Supreme Court to hear an appeal, but this was turned down in October 2014.
14. Annex 1 sets out the CAA's view of the legal position on the time period for making a claim along with a brief explanation of the EU and English case law.

How are airlines handling claims following the Court of Appeal judgments?

15. Following the Supreme Court's decisions in October 2014, we wrote to all airlines and set out our expectation that they would now begin to settle claims that had been put on hold. As part of this report, we asked the largest fifteen airlines by passengers carried to confirm that they are now paying claims in accordance with the *Jet2 v Huzar* and *Dawson v Thomson Airways* judgments. We also asked them to confirm that they are applying the updated CAA guidance on extraordinary circumstances.
16. The questions asked are set out below, followed by a table of responses. Full responses can be found at Annex 2.

⁴ Jet2, Wizz Air and Ryanair made various applications to the court for a stay (or delay) to be applied to claims on the basis that the outcome of a case being heard by the European Court (*Van der Lans v KLM*) may have a bearing on whether the extraordinary circumstances defence could be used. The Judge rejected the application and supported the use of the *Jet2 v Huzar* judgment as relevant and appropriate case law.

Payment of claims

17. The CAA asked:

- a) Following the *Jet2 v Huzar* judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.
- b) Are you paying passenger claims for compensation that fall within the scope of the *Jet2 v Huzar* judgment?
- c) If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

Time period for making a claim

18. The CAA asked:

- a) The *Dawson v Thomson Airways* judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.
- b) If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the *Dawson v Thomson Airways* judgment.

Summary of responses

19. These questions were put to the airlines to provide assurance to the CAA that they are complying with the Regulation including all relevant case law. This assurance was received from the majority of respondents, as the table below shows.

| Airline | Paying compensation for technical faults | Applying a 6 year claim period |
|----------------------|--|--------------------------------|
| British Airways | ✓ | ✓ |
| easyJet | ✓ | ✓ |
| Ryanair | Seeking to stay some claims | ✓ |
| Thomson Airways | ✓ | ✓ |
| Flybe | ✓ | ✓ |
| Monarch Airlines | ✓ | ✓ |
| Thomas Cook Airlines | ✓ | ✓ |
| Virgin Atlantic | ✓ | ✓ |
| Jet2.com | Insufficient assurance | ✗ |
| Emirates | ✓ | ✓ |
| Lufthansa | ✓ | ✓ |
| Aer Lingus | ✓ | ✓ |
| Air France KLM | ✓ | ✓ |
| Wizz Air | Insufficient assurance | ✗ |
| United Airlines | ✓ | ✓ |

CAA Action

20. Jet2 had previously been seeking to stay claims for compensation for disruption caused by technical faults. Jet2 has now confirmed to us that it will begin processing claims in accordance with the *Huzar* judgment. However, given that the airline has changed its position at the last minute, and given that it has provided us with no detail beyond the statement that it will begin processing claims, we do not feel that we have sufficient assurance that Jet2 will apply the *Huzar* judgment correctly. In addition, Jet2 has maintained its position of applying a 2 year claim limit in its contractual terms. We have therefore begun the legal phase of our enforcement process against Jet2 using our powers under Part 8 of the Enterprise Act 2002.

21. Wizz Air has not confirmed whether it will be paying claims in accordance with the *Huzar* judgment and it also applies a 2 year claim limit in its contractual terms. We have also begun the legal phase of our enforcement process against Wizz Air using our powers under Part 8 of the Enterprise Act 2002.
22. We understand that Ryanair is appealing the judgment made at Liverpool County Court and it is continuing to stay some claims. We will be seeking further information from Ryanair using our powers under Part 8 of the Enterprise Act regarding the criteria it is using to assess which claims to put on hold.
23. We used our formal information powers to obtain information from Aer Lingus to assess their compliance and will not be taking any further action against them in respect of compensation claims.



ANNEX 1

CAA guidance on the legal obligation

Financial compensation

EC261/2004

Recital 14

“As under the Montreal Convention, obligations on operating air carriers should be limited or excluded 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. Such circumstances may, in particular, occur in cases of political instability, meteorological conditions incompatible with the operation of the flight concerned, security risks, unexpected flight safety shortcomings and strikes that affect the operation of an operating air carrier.”

Recital 15

“Extraordinary circumstances should be deemed to exist where the impact of an air traffic management decision in relation to a particular aircraft on a particular day gives rise to a long delay, an overnight delay, or the cancellation of one or more flights by that aircraft, even though all reasonable measures had been taken by the air carrier concerned to avoid the delays or cancellations.”

Article 5

Article 5 of EC261/2004 sets down the obligations to provide compensation to passengers for cancelled flights. It also places an obligation on the airline to prove the existence of ‘extraordinary circumstances’. European case law (Sturgeon C 402/07⁵ and TUI/Nelson C-581/10⁶) extended the obligations in Article 5 to also provide compensation for delays of 3 hours or more.

5 <http://curia.europa.eu/juris/document/document.jsf?text=&docid=73703&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=390618>

6 <http://curia.europa.eu/juris/document/document.jsf?docid=128861&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=390406>

Extracts from Article 5

“5(1) In case of cancellation of a flight, the passengers concerned shall:

- c) have the right to compensation by the operating air carrier in accordance with Article 7, unless:*
 - i) they are informed of the cancellation at least two weeks before the scheduled time of departure; or*
 - ii) they are informed of the cancellation between two weeks and seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than two hours before the scheduled time of departure and to reach their final destination less than four hours after the scheduled time of arrival; or*
 - iii) they are informed of the cancellation less than seven days before the scheduled time of departure and are offered re-routing, allowing them to depart no more than one hour before the scheduled time of departure and to reach their final destination less than two hours after the scheduled time of arrival.*

5(3) An operating air carrier shall not be obliged to pay compensation in accordance with Article 7, if it can prove that the cancellation is caused by extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken.”

Article 7

Article 7 sets out the amounts of compensation payable based on the distance of the flight.

Extracts from Article 7

“7(1) Where reference is made to this Article, passengers shall receive compensation amounting to:

- (a) EUR 250 for all flights of 1500 kilometres or less;*
- (b) EUR 400 for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;*
- (c) EUR 600 for all flights not falling under (a) or (b).”*

European case law

*C 549/07 - Wallentin-Hermann v Alitalia*⁷

The Wallentin-Hermann judgment considered the issue of how far technical problems could be considered to be an extraordinary circumstance. In *Jet2 v Huzar*, the Court of Appeal provided further clarity on how this judgment should be applied to general technical faults.

The *Wallentin-Hermann* judgment does of course still apply and of particular note is paragraph 26 of the judgment which deals with hidden manufacturing defects.

“26. However, it cannot be ruled out that technical problems are covered by those exceptional circumstances to the extent that they stem from events which are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control. That would be the case, for example, in the situation where it was revealed by the manufacturer of the aircraft comprising the fleet of the air carrier concerned, or by a competent authority, that those aircraft, although already in service, are affected by a hidden manufacturing defect which impinges on flight safety. The same would hold for damage to aircraft caused by acts of sabotage or terrorism.”

The judgment also provided some clarification on the steps airlines have to take to prove that an extraordinary circumstance existed and that it took all reasonable measures to avoid the resulting disruption.

“40. It follows that, since not all extraordinary circumstances confer exemption, the onus is on the party seeking to rely on them to establish, in addition, that they could not on any view have been avoided by measures appropriate to the situation, that is to say by measures which, at the time those extraordinary circumstances arise, meet, inter alia, conditions which are technically and economically viable for the air carrier concerned.

41. That party must establish that, even if it had deployed all its resources in terms of staff or equipment and the financial means at its disposal, it would clearly not have been able – unless it had made intolerable sacrifices in the light of the capacities of its undertaking at the relevant time – to prevent the extraordinary circumstances with which it was confronted from leading to the cancellation of the flight.”

⁷ <http://curia.europa.eu/juris/document/document.jsf?text=&docid=73223&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=390800>

English case law

Jet2 v Huzar

The Court of Appeal considered a case which involved a wiring defect on a Jet2 aircraft. The court accepted that Jet2 could not have foreseen the problem, but did not consider that this was sufficient for the fault to fall under the extraordinary circumstances exemption. The court looked carefully at the test developed in the *Wallentin-Hermann* judgment that:

“Article 5(3) of Regulation (EC) No 261/2004 ... must be interpreted as meaning that a technical problem in an aircraft which leads to the cancellation of a flight is not covered by the concept of ‘extraordinary circumstances’ within the meaning of that provision, unless that problem stems from events which, by their nature or origin, are not inherent in the normal exercise of the activity of the air carrier concerned and are beyond its actual control.”⁸

The court considered that, if this is to be considered to be a two-part test, the key part of the test was whether the technical problem was “inherent” in the normal operation of the airline and not whether it was beyond the airline’s control. An alternative way of considering the issue was also advanced, namely that the event causing the technical problem will be within the control of the airline if it is part of the normal everyday activity which is being carried on and will be beyond the airline's control if it is not.

CAA view on compliance

Our understanding of how the *Jet2 v Huzar* judgment relates to technical issues is as follows:

- For a technical problem to constitute an extraordinary circumstance, the circumstances must be out of the ordinary and not part of the normal everyday activity;
- The fact that a particular technical problem may be unforeseeable does not mean that it is out of the ordinary or unexpected;
- Difficult technical problems arise as a matter of course in the ordinary operation of a carrier's activity – some may be foreseeable and some not but in general they are properly described as inherent in the normal exercise of the carrier's activity;
- Events which are beyond the control of the carrier because caused by the extraneous acts of third parties, such as acts of terrorism, strikes or air traffic control problems, or due to weather conditions cannot be characterised as inherent in the normal activities of the carrier.

8 Paragraph 15 of the *Jet2 v Huzar* judgment

Non-technical incidents

The CAA guidance provides details of the other types of incidents that may constitute an extraordinary circumstance. The onus is on the airline to prove that extraordinary circumstances existed and it must also demonstrate that it took all reasonable measures to avoid the resulting delay or cancellation.

Information for passengers

If airlines consider a delay or cancellation is due to an extraordinary circumstance, we expect them to provide a full explanation to any passengers making a claim for compensation. This should provide sufficient information for a passenger to understand what happened and what measures the airline took to avoid the disruption.

Information for NEBs

Airlines are required to prove extraordinary circumstances exist. We therefore expect them to provide information to NEBs on request.

Limitation periods for making a claim

EC261/2004

EC261/2004 does not set down a period within which passengers must make a claim. However, Article 15 states that airlines may not limit or waive their obligations under this Article by imposing more restrictive clauses in their contracts with consumers.

Article 15

“15(1) Obligations vis-à-vis passengers pursuant to this Regulation may not be limited or waived, notably by a derogation or restrictive clause in the contract of carriage.

15(2) If, nevertheless, such a derogation or restrictive clause is applied in respect of a passenger, or if the passenger is not correctly informed of his rights and for that reason has accepted compensation which is inferior to that provided for in this Regulation, the passenger shall still be entitled to take the necessary proceedings before the competent courts or bodies in order to obtain additional compensation.”

European case law

C 139/11 Joan Cuadrench Moré v KLM⁹

This case considered the time period for passengers to issue a claim in respect of EC261/2004 matters and whether the time period of 2 years set out under the Montreal Convention¹⁰ should also apply to the time allowed to commence a compensation claim under EC261/2004. The court found that it should not and that the applicable national limitation period should apply:

*“...must be interpreted as meaning that the time-limits for bringing actions for compensation under Articles 5 and 7 of that regulation are determined in accordance with the rules of each Member State on the limitation of actions.”*¹¹

English case law

Dawson v Thomson Airways Ltd¹²

The Court of Appeal considered whether existing English case law restricted the limitation period in respect of bringing a compensation claim under EC261/2004 to 2 years. The Court found that it did not and that for claims brought under EC261/2004, the UK limitation period of 6 years applied.¹³

CAA view on compliance

This ruling is straightforward and we expect airlines to apply a 6 year limitation to claims brought under EC261/2004.

9 <http://curia.europa.eu/juris/document/document.jsf?docid=130243&mode=req&pageIndex=1&dir=&occ=first&part=1&text=&doclang=EN&cid=86007>

10 The 1999 Convention for the Unification of Certain Rules for International Carriage by Air

11 Paragraph 22 of the judgment

12 [2014] EWCA Civ 845

13 Section 9 of the Limitation Act 1980

ANNEX 2

Responses received to CAA request for contributions

British Airways

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

BA recognises the Huzar and Dawson judgments and has regard to the CAA guidance

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

See above

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

See above

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

See above

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

See above

easyJet

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Yes

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Yes

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

N/A

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Yes - we have done so prior to Dawson v Thomson Airways decision.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

We apply the national limitation periods as appropriate.

Ryanair

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

We confirm that in relation to Categories 1-20 and 28-30 we adhere to the revised list. However, in relation to Categories 21-27 we do not agree with their removal.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Where technical issues arise by virtue of wear and tear or a failure to maintain, we will readily pay compensation to passengers who submit claims.

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

Where it is clear to us that the technical issue was not inherent in the normal operations of our fleet and as such is an extraordinary circumstance beyond our control, then and in those circumstances we will vehemently defend all claims for compensation.

We advise claiming passengers of the Van der Lans v. KLM case pending before the CJEU and of our formal application to the Courts to further stay technical cases until the CJEU issues its decision.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

We confirm that we now apply the 6 year limitation period in the UK.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

N/A

Thomson Airways

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Yes

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Yes

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

N/A

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Yes

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

N/A

Flybe

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Flybe can confirm that we do apply this guidance when considering compensation claims.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Flybe can confirm that we continue to comply and pay with all regulations where there is a legal entitlement to compensation..

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

Please see answer to Q1 above.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Flybe can confirm that we are applying the limitation period of 6 years from the 9th March 2015.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

Please see above response to question 4

Monarch Airlines

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Monarch Airlines confirms that the case law clarified in the Jet2 v Huzar judgment in conjunction with the updated CAA list is applied during the assessment process for flight delay compensation claims.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Monarch Airlines confirms that it is paying flight delay compensation claims for those flights which, following assessment, it does not consider to be 'extraordinary circumstances' in accordance with the case law clarified in the Jet2 v Huzar judgment and updated CAA list.

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

Not applicable to Monarch Airlines.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Monarch Airlines confirms that it has always applied a 6 year limitation period to all claims as per the Statute of Limitation Act.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

Not applicable to Monarch Airlines.

Thomas Cook Airlines

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Yes, we apply the CAA guidance when considering compensation claims.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Yes

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

As above.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Yes, we apply the 6 year limitation period.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

N/A

Virgin Atlantic

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Claims are assessed on a case by case basis. Our Customer Relations team has access to and are mindful of the CAA's guidance when handling claims.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Whilst claims are assessed on a case by case basis, we can confirm that we pay compensation where our liability is engaged. On current case law, when assessing claims, the case of Jet2 and Huzar is a relevant consideration, as indeed are other cases across Europe if they apply to a relevant claim fact pattern.

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

See answer to question 2 above.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Virgin currently applies a 6 year limitation period where legitimate claims are received and our liability is engaged.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

N/A

Jet2.com

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

We consider the list of extraordinary circumstances published on the CAA's website as well as the wording of the EC Regulations and the relevant CJEU and English court decisions.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

We are paying claims for compensation where the sole cause of the delay is a technical defect within the scope of the Jet2.com v Huzar judgment. Following the judgment of the Liverpool County Court on 26 February 2015 in the case of Allen v Jet2.com we are not currently issuing new applications to stay proceedings pending the outcome of van der Lans v KLM.

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

Not applicable for the reasons given above.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Jet2.com applies a contractual limitation period of two years as clearly set out in its conditions of carriage, which are incorporated into every contract with passengers. The Dawson judgment did not consider the effect of contractual time limits which are incorporated into conditions of carriage and only dealt with the question of the general limitation period. In Jet2.com's case there is an overriding contractual limitation period of two years. Further detail on the reasons for Jet2.com's approach are set out in paragraph 5 which follows.

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

(a) The Court of Appeal in Dawson made it clear that the domestic law should apply to the time limits in which claims for compensation pursuant to the Regulation should be made. As a matter of domestic English law, it is entirely permissible to have a contractual limitation period for claims in contract or tort. Provided that the conditions of carriage are incorporated into the contract with the passenger, and the period is not unreasonable, an airline has a defence to a claim if it is commenced in the courts after the expiry of that shorter contractual period. There is nothing in the Dawson case which states to the contrary.

- (b) Jet2.com's conditions of carriage, which are incorporated into every contract, provide for a 2 year contractual limitation period. A 2 year limitation period cannot be considered to be unreasonable given that it is the same period as is provided for in the Montreal Convention in respect of much more complex and serious causes of action. Indeed it is a generous period when one considers that in a flight delay claim, the passenger immediately has all of the information and evidence he or she needs to lodge a claim.
- (c) Such 2 year contractual limitation periods have been upheld by the courts, for instance in the cases of *Pickard v Ryanair* and *Clissold v Ryanair*. In both cases, the Claimants' claims were dismissed as the claims had not been commenced within the adjudged "fairly imposed" two year limitation period in accordance with the airline's terms and conditions. In addition, the Liverpool County Court, where the majority of "Flight Delay" claims are allocated, has struck out claims of its own volition on the basis that, by entering into a contract with our client, the passenger agreed, under the relevant clause of Terms and Conditions, that the limitation for claims would be reduced to two years.
- (d) For completeness, we note that it has been suggested recently that Article 15 of the Regulation limits an airline's entitlement to agree a period shorter than the normal contractual time limit. Article 15 does not have this effect. It prevents an airline from limiting or waiving "obligations". The only relevant obligation in the Regulation is the obligation of the airline to pay compensation in the sums set out in Article 7. Article 15 prevents an airline from imposing a term which reduces the extent of its obligation to pay compensation; it does not prevent it from setting a reasonable period for the lodgment of claims. We are unaware of any court decision to the contrary.

Emirates

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Yes

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Yes

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

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4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Yes

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

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Lufthansa

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

We confirm that Lufthansa applies the CAA's updated guidance list when considering compensation claims.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

We are paying passenger claims for compensation that fall within the scope of this judgement.

4. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

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5. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Lufthansa applies the 6 year limitation period for claims in connection with EC rule 261/2004 in the UK.

6. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

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Aer Lingus

We obtained a response under our formal information powers which we are therefore unable to reproduce here.

Air France KLM

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

Air France KLM applies the guidance published by the CAA when considering compensation claims.

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Air France KLM pays passenger claims for compensation that fall within the scope of the Jet2 V Huzar Judgment.

4. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

N/A

5. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

Air France KLM applies the limitation period of 6 years as per the Dawson v Thomson Airways judgment.

7. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

N/A

Wizz Air

Non-confidential version

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

[confidential]

2. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

[confidential]

3. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

If Wizz Air decides to refuse a compensation request, the reason of such decision is that it is of the opinion that the flight disruption was caused by extraordinary circumstances. In such cases, each passenger is given full information of the circumstance behind flight disruption and Wizz Air reasoning for declining compensation request.

4. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

[confidential]

5. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

[confidential]

United Airlines

1. Following the Jet2 v Huzar judgment the CAA published updated guidance (CAA List) on the incidents that could be considered to be an 'extraordinary circumstance'. Please confirm that you apply this guidance when considering compensation claims.

We apply the CAA's guidance when considering compensation claims.

3. Are you paying passenger claims for compensation that fall within the scope of the Jet2 v Huzar judgment?

Yes

4. If you are not paying passenger claims, please explain what approach you are taking to these claims and your reasoning for not paying.

N/A

5. The Dawson v Thomson Airways judgment confirmed that the limitation period in the UK for taking a case to court in respect of the Denied Boarding Regulations is 6 years. Please confirm that you apply this limitation period.

We apply this limitation period.

6. If, for any reason, you apply a different limitation period, please explain what it is, how you apply it in practice (for example through your Terms and Conditions), and why you consider it is not in conflict with the Dawson v Thomson Airways judgment.

N/A