



## Which? says

The EC and the Air Transport Users Council (AUC) have not done enough to ensure airlines follow the rules. There needs to be an unambiguous definition of 'extraordinary circumstances' for a cancellation.

We would like to see airlines required to give details of any technical problems that cause a cancellation and the exclusion of excuses such as staffing problems and illness or any other operational factors that airlines should be able to handle.

We also want to see more information for passengers about their rights at all airports. Visit [www.which.co.uk/flightrights](http://www.which.co.uk/flightrights) for more information on your rights and template letters that you can use to make a claim.

# Flight or fight?

If your flight is cancelled, you could be entitled to compensation. But getting your hands on it is another story

**M**alcolm Campbell and his family expected to get compensation when they were told their Ryanair flight was cancelled due to crew illness on another route. But despite an overnight wait, he has had his compensation claim rejected and is still in dispute with Ryanair (see 'No crew, no plane, no compensation', opposite). Malcolm is not alone. We asked members to tell us about any successful compensation claims for cancelled flights on any airline and we didn't receive one email or letter of confirmation. Instead, we had letters from passengers angry that their claims had been rejected.

In 2005, when the EU brought in new rules to help passengers whose flights were cancelled, it was seen as a victory for consumers. But two years on there are signs that the regulations are delivering only disappointment and confusion.

### What can I claim?

If your flight is cancelled when you are at the airport, you are entitled to meals, refreshments and phone calls or accommodation while you wait. You should be offered a refund or rerouted as soon as possible.

If your flight departs or arrives outside set time limits (see [www.which.co.uk/flightrights](http://www.which.co.uk/flightrights) for more details), you may qualify for monetary compensation – up to £287 each for flights within the EU and up to £430 worldwide.

But our investigation and a review by the European Commission (EC) show that airlines are using loopholes to deny passengers compensation they are entitled to – avoiding thousands of claims by not telling consumers their rights at the airport and failing to reroute them as soon as possible.

### Extraordinary circumstances

Ambiguity in the regulations has made it easier for airlines to avoid paying compensation. If an airline can show that a cancellation was caused by 'extraordinary circumstances' that could not have been avoided, it doesn't have to pay out. The five main circumstances are political instability, strikes, security risks, unexpected flight safety shortcomings and bad weather. And it seems that airlines are using these vague terms to cover most eventualities.

Peter McCarthy, a senior lawyer at Which? Legal Service, believes that too many consumers' claims are not being fairly

**Airlines are avoiding thousands of claims by not telling customers about their rights**

dealt with. 'We're getting complaints from many people who, in our opinion, have valid claims that are being refused,' he said.

Passengers on other cancelled flights told us of being offered frequent-flyer points or half-price flights instead of compensation. We also had letters from those who mistakenly thought a refund of their fare, taxis or overnight hotel stays was compensation.

There's also been little joy for people who have challenged the airlines in the small claims court, often because airlines give few details before a case of what the extraordinary circumstances such as technical problems are, thus making it hard to mount a



PHOTOGRAPHY: GETTY IMAGES; ROBIN BECKHAM; LUKE RICHARDS

## NO CREW, NO PLANE, NO COMPENSATION

**Malcolm Campbell** 32, local government officer

Malcolm and his wife Debbie, from Lancaster, have been fighting a losing battle to get compensation from Ryanair. Their cancelled evening flight from Stansted to Blackpool led to a hellish chain of events for the couple and their nine-month-old son, Archie.

They were told their flight was cancelled as the crew was needed for another flight. A bus was laid on instead, but there were not enough seats for everyone and as Archie was running short of medicated formula milk, they decided not to travel. Instead, they headed for the nearest hospital to pick up more supplies. After an overnight stay at a hotel, they were put on a Ryanair flight the next day. Malcolm asked for compensation under the EU regulations. Ryanair said it would pay expenses but not compensation.

Ryanair told us: 'Mr Campbell is not entitled to any other monetary compensation as this delay and subsequent cancellation was caused for safety reasons beyond our control – crew illness.'

Malcolm said: 'I think Ryanair's excuse is ridiculous. Companies have staff off sick all the time so it's an airline's responsibility to make sure that it covers that sort of problem.'



convincing challenge. And appeals to the airline watchdog, the Air Transport Users Council (AUC), have also failed for these reasons. Despite about 2,000 complaints last year, the AUC reports only 'a handful' of successful challenges – around 1 per cent.

### The airlines' response

We asked 11 airlines for more information on when they would pay out for a cancellation. None of them would give us a spe-

cific example of when it had paid out compensation under the EU regulations.

Our survey asked the airlines whether they'd pay this compensation under certain circumstances, including a burst tyre or check-in desks closed due to a broken baggage belt. Monarch, Flybe and Virgin Atlantic said all the examples we gave were extraordinary circumstances. British Airways and EasyJet couldn't specify. BMI and Jet2.com refused to fill in the survey. And

## NOT SO EASY TO GET COMPENSATION

**Suzanne Agnew** 42, photographer

Thick fog caused the cancellation of Suzanne's EasyJet flight from Stansted to Malaga. This was pretty galling for Suzanne as there was no fog at either Stansted or Malaga that day. She was told that the EU regulations didn't apply to her flight and was not offered a claims form. 'EasyJet just wanted me to go away,' she said. 'The other

passengers seemed grateful to just rebook their flights.'

There was no offer of phone calls or refreshments and Suzanne had to wait two days for another flight. She wrote to EasyJet but didn't receive compensation or reimbursement, as she was told the cancellation was caused by technical problems and not fog and was

classified as 'extraordinary circumstances'. She has now taken her case to the AUC.

A spokeswoman for EasyJet told us: 'The flight was cancelled as a result of adverse weather conditions across the network.' The airline added that it had made a mistake in advising that the cancellation was due to technical reasons.

## Checklist

### Preparing a compensation claim for a cancellation

✈ **Your rights** Get a copy of your rights under the regulations at the airport and a claim form from staff.

✈ **Get it in writing** Ask airline staff to write down the reason for the cancellation or get them to sign something you've written.

✈ **Gather evidence** Take names of other passengers and get them to witness what airline staff tell you. If weather is used as an excuse, get confirmation that other flights are departing normally by taking photos of the departure or arrivals board.

✈ **Contact the airline** Once home write to the airline immediately, asking for a reply within 28 days.

✈ **Consider court action** If the airline cites 'extraordinary circumstances', ask for proof. If you are not satisfied, send a 'letter before action' to the airline saying you will take the case to the small claims court. Register the complaint with the AUC – [www.caa.co.uk](http://www.caa.co.uk)

✈ **Be prepared** Cases can be settled at this stage (see *Which?*, November 2006, p80); otherwise prepare for court action.

✈ **Precedent** Ryanair said it will pay compensation in certain circumstances (see below) and we know that EasyJet has also paid out for 'staff shortage'. We believe other airlines should follow suit.

First Choice Airlines, Thomas Cook Airlines and Thomsonfly said the examples didn't apply to them as they rarely cancelled flights. Ryanair, unlike other airlines, told us that for two of the examples, it would pay compensation – if a cancellation was due to air crew exceeding their flying hours or a fault on the plane, such as a toilet out of use.

The EC review agrees that there may have been abuse of the definition of extraordinary circumstances to avoid compensation. The new rules have also failed to reduce the number of cancelled aircraft. As a result, the EC has now given airlines six months to apply the rules more consistently, but it also puts the blame at the door of the national enforcement bodies such as the AUC, saying that regulations should be enforced more effectively. The AUC told us it didn't want to comment at present.

It's hard to see how passengers can get a fair deal without a clearer definition of extraordinary circumstances, yet it appears the commission doesn't intend to make that definition clearer. And until that happens, airlines will avoid paying compensation and passengers will continue to lose out.