

# Are you entitled to your money back in the event of a cancellation of a flight?

Author:  
Sarah Conroy

Date:  
April 2019

This is governed by Article 8(1) of Regulation (EC) 261/2004. The CJEU gave a preliminary ruling<sup>1</sup> on this point on 12 September 2018.

The ruling concerned the interpretation of Article 8(1)(a) of the Regulation which establishes common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights.

In Article 2(f), a ticket is defined as “a valid document giving entitlement to transport, or something equivalent in paperless form, including electronic form, issued and authorised by an air carrier or its authorised agent”.

Article 8(1)(a) deals with right to reimbursement or rerouting, as follows:

“Where reference is made to this Article, passengers concerned shall be offered the choice between:

- (a) - Reimbursement within seven days, by the means provided for in Article 7(3), of the full cost of the ticket at the price at which it was bought....  
A return flight to the first point of departure...”

## Facts

This involved proceedings between Mr and Mrs Harms and their four children and Vueling Airlines SA. They had purchased their tickets via an intermediary (Opodo). Mr Harms purchased tickets for himself, his wife and their four children to fly from Hamburg in Germany to Faro in Portugal via Barcelona in Spain by a flight operated by Vueling Airlines. He was invoiced a sum of €1,108.88 in respect of that purchase and the website sent him confirmation. Opodo then transferred the amount of €1,038.88 to Vueling Airlines. The flight was not carried out in accordance with the travel plan. This was regarded as a cancellation of the flight for the purpose of the Regulation. Mr Harms argued that he was entitled to be reimbursed the full amount of €1,108.88 which he was invoiced. The airline contended that it did not have to reimburse him the difference between the amount and the amount of €1,108.88 collected by Opodo. In its view, the difference of €77 is not part of the price.

The local court in Hamburg decided to refer the question to the CJEU.

The Court considered the following question - does the concept of reimbursement mean the full cost of the ticket at the price at which it was bought or is it the amount which the defendant air carrier has actually received, where the intermediary collects the difference between

<sup>1</sup> Case C-601/17, 12 September 2018.

## Are you entitled to your money back in the event of a cancellation of a flight?

what the passenger pays and what the air carrier receives? Does this mean that the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed by the air carrier to the passenger in the event of a cancellation of a flight includes the difference between the amount paid by that passenger and the amount received by the air carrier, which corresponds to a commission collected by the person acting as an intermediary?

The Court indicated that, under the Regulation, the onus is on the air carrier (in the event of cancellation) to offer assistance to the passengers concerned in the form of offering them reimbursement of their ticket at the price at which it was bought and, when necessary, a return flight. The wording of Article 8(1)(a) establishes a direct link between the concept of “*ticket*” and the expression “*price at which it was bought*”, it being possible to buy a ticket either directly from the air carrier or through an intermediary or an authorised agent. When a commission is collected, the question arises whether and to what extent that commission is a component of the price of the ticket to be reimbursed by the air carrier in the event of cancellation of the flight.

The Court indicated that the objectives of Regulation (EC) 261/2004 are to ensure a high level of protection for passengers but also to strike a balance between the interests of passengers and those of air carriers. It has to be considered that while commission collected by an intermediary from a passenger when the ticket was bought must, in principle, be regarded as a component of the price to be reimbursed to that passenger in the event of

cancellation of the corresponding flight, its inclusion must nevertheless be subject to certain limits. The various elements of such a ticket including its price must, if that ticket is not issued by the air carrier itself, in any event, be authorised by it and therefore cannot be set without its knowledge. A component of the price of the ticket which is set without the knowledge of the air carrier cannot be regarded as necessary in order to avail of the service proposed by the air carrier.

### Decision

The answer to the question posed is that the price of the ticket to be taken into consideration for the purposes of determining the reimbursement owed by the air carrier to the passenger in the event of a cancellation a flight includes the difference between the amount paid by that passenger and the amount received by the air carrier which corresponds to a commission collected by a person acting as an intermediary between those two parties, unless that commission was set without the knowledge of the air carrier, which was for the referring court to ascertain.

Therefore the matter was referred back to the local court in Hamburg for determination.

With recent uncertainty in relation to air travel and the increase in the use of intermediaries in making travel arrangements, it is clear that the issues arising in this decision will be of great relevance in the next few years.



Sarah Conroy  
Partner  
+353 (0) 1 536 9613  
[s.conroy@beale-law.com](mailto:s.conroy@beale-law.com)